Trial of John H. Surratt in the Criminal Court for the District of Columbia

Hon. George P. Fisher Presiding.

Volume 1

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Surratt J. Harrison

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Author: Surratt J. Harrison

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TRIAL

OF

JOHN H. SURRATT

IN

THE CRIMINAL COURT

FOR

THE DISTRICT OF COLUMBIA,

Hon. GEORGE P. FISHER Presiding.

VOLUME I.

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TRIAL.

JUNE 10, 1867.

The court was opened at 10 o'clock. Present: the district attorney, E. C. Carrington, esq., his assistant, N. Wilson, esq., and associate counsel, Messrs. Edwards Pierrepont and A. G. Riddle, for the United States, and the prisoner and his counsel, Messrs. Joseph H. Bradley, R. T. Merrick, and Joseph H. Bradley, junior.

The COURT said: Gentlemen, this is the day assigned for the trial of John H. Surratt, indicted for the murder of Abraham Lincoln, late President of the United States. Are you ready to proceed?

Mr. BRADLEY. The prisoner is ready, sir, and has been from the first.

The COURT. Are you ready, Mr. Carrington?

The DISTRICT ATTORNEY. If your honor please, I am happy to be able to announce that the government is ready to proceed with the trial. Before we proceed, however, sir, to empanel a jury, we desire to submit a motion to the court, which motion we have reduced to writing. With the permission of the court I will now proceed to read it to your honor. It is as follows:

In the Supreme Court of the District of Columbia. United States *vs.* John H. Surratt. Indictment, murder.

And now, at this day, to wit, on the 10th day of June, A. D. 1867, come the United States and the said John H. Surratt, by their respective attorneys; and the jurors of the jury empanelled and summoned also come; and hereupon the said United States, by their attorney, challenge the array of the said panel, because he saith that the said jurors comprising said panel were not drawn according to law, and that the names from which said jurors were drawn were not selected according to law; wherefore he prays judgment, and that the said panel may be quashed.

The DISTRICT ATTORNEY. This motion, if your honor please, is sustained by an affidavit which I hold in my hand, and which, with the permission of your honor, I will now proceed to read. We think that it will be found unnecessary, after this affidavit has been read, to introduce any oral testimony.

The affidavit was then read as follows:

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

Be it remembered that on this seventh day of June, A. D. 1867, before the subscriber, a justice of the peace in and for the county aforesaid, in the District aforesaid, personally appeared Samuel Douglass, who, being first duly sworn, deposes and says, that in the months of January and February, A. D. 1867, he was register of Washington city, in the District aforesaid; that about the first of February in said year, this affiant deposited in the box required to be kept in the office of the clerk of the supreme court of the District of Columbia, four hundred names, (each name being written on a separate piece of paper, and each paper being carefully rolled and tied,) as a part of the names from which jurors were to be selected under the provisions of the act of Congress of June 16, 1862; that at the same time the clerk of the levy court deposited forty names, and the clerk of Georgetown deposited eighty names in said jury box; that the names deposited by this official were selected by him partly from the poll lists of Washington city and partly from the names of citizens who he thought well qualified to serve as jurymen; that the names of the persons so selected by this affiant as register were not communicated by him to the clerk of Georgetown or

the clerk of the levy court, nor did they at any time know the names selected by this affiant, nor did this affiant know at any time the names of those selected by the said clerk of Georgetown, nor by the clerk of the levy court; that the names having been deposited as aforesaid, the box was returned to the clerk of the supreme court of the District of Columbia, and by said clerk sealed, as this affiant believes, in the presence of this affiant; that the petit jurors for the March term of the criminal court, 1867, were selected or drawn from the names deposited in said box on said first day of February, and were drawn by the clerk of Georgetown, as this affiant recollects and believes; that the names were deposited in the manner hereinbefore stated and in no other way, and that, if it appears that any of the names for Washington city, deposited as aforesaid, and in the handwriting of any person, whether this affiant or his clerk, then the same were deposited without the knowledge or consent of this affiant; and further, this affiant says that the paper or papers containing the names of those whose names were written on said four hundred pieces of paper and deposited as aforesaid, he cannot now find, although he has made diligent search for the same.

SAMUEL E. DOUGLASS.

Subscribed and sworn to before me this seventh day of June, 1867.

CHAS. WALTER, *J. P.*

The COURT. Mr. Carrington, will you be kind enough to read that part of the affidavit which speaks of the handwriting of the affiant?

Mr. Carrington then read as follows:

"That the names were deposited in the manner as hereinbefore stated, and in no other way, and if it appears that any of the names for Washington city, deposited as aforesaid, are in the handwriting of any person other than this affiant or his clerk, then the same were deposited without the knowledge or consent of this affiant."

The COURT. Are there any of those names which are not in the handwriting of Mr. Douglass?

The DISTRICT ATTORNEY. Perhaps it is better that I should proceed at once to state to your honor the points upon which we rely, and which we think will satisfy the court that the law has not been complied with——

Mr. PIERREPONT. In any respect.

The DISTRICT ATTORNEY. And that a verdict rendered by this jury would be entirely illegal. Feeling that it would be idle to proceed to trial with the present panel, we have considered it our duty to present this point to the court, and with your honor's permission, will lay before you the law bearing on the subject.

I will read first, sir, those sections of the act of June 16, 1862, (12 Statutes at Large, p. 428,) which we regard as necessary to elucidate the propositions which we propose to submit, and will then state, more clearly than I have done, the objections which we make. The act is entitled "An act providing for the selection of jurors to serve in the several courts of the District of Columbia."

Mr. Carrington then read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown and the levy court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District, in which lists may be included, in the discretion of the officer making the same, the names of such qualified persons as were on the list of the previous year, but did not serve as jurors, and

the lists thus made by the register and clerks aforesaid shall be kept by them, respectively, and be delivered over to their successors in office.

SEC. 2. *And be it further enacted*, That the officers aforesaid shall select from the list of the register of Washington city, the names of four hundred persons; from that of the clerk of Georgetown, eighty persons, and from that of the clerk of the levy court, forty persons, which proportion, after the year eighteen hundred and sixty-three, may be varied from year to year according to the increase or decrease of population in the respective jurisdictions, by order of the judges of the circuit court of Washington county.

SEC. 3. *And be it further enacted*, That the mayors of the cities of Washington and Georgetown, all judicial officers, salaried officers of the government of the United States, commissioners of police, and those connected with the police or fire department, counsellors and attorneys at law, ministers of the gospel and priests of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of said District, and keepers of public ferries, shall be exempt from jury duty, and their names shall not be placed on the list aforesaid.

SEC. 4. *And be it further enacted*, That the names selected from said lists shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names cannot be seen, and placed in a box, to be provided by the register and clerks aforesaid; which box shall be sealed, and after being thoroughly shaken, shall be delivered to the clerk of the circuit court of Washington county for safe keeping.

SEC. 5. *And be it further enacted*, That the said register and clerks, and the clerk of the circuit court, shall, at least ten days before the commencement of each term of the circuit court, or of the criminal court, meet at the City Hall in Washington city, and then and there the clerk of the circuit court shall publicly break the seal of said box, and proceed to draw therefrom the names of so many persons as are required; and if the jury about to be drawn is intended for service in the criminal court, the twenty-three persons whose names shall be first drawn shall constitute the grand jury; and the twenty-six persons whose names shall next be drawn shall constitute the petit jury for that term; but in a capital case where the said panel shall have been exhausted by reason of challenge or otherwise, the court before whom such capital case is pending may, in its discretion, order additional names to be drawn; and if all of the names in the box shall have been drawn out and no jury found, the court may order the marshal to summon talesmen until a jury shall be found. And if a jury be required for the circuit court, the twenty-six persons whose names shall first be drawn shall constitute the jury for that term, and the names of the persons drawn as aforesaid shall not be again placed in such box for the period of two years. If any person whose name is so drawn shall have died or removed from the District, or has become otherwise disabled from serving as a juror, the said register and clerks shall draw from the box another name, who shall serve instead; and after the requisite number of jurors shall have been so drawn, the said box shall be again sealed and delivered to the clerk of the circuit court as aforesaid.

SEC. 6. *And be it further enacted*, That it shall be the duty of the marshal of the District of Columbia, at least five days before the meeting of the court for which a jury is required, to notify each person drawn, by serving on him a notice in writing of his selection as a juror of the court he is to attend, and of the day and hour he is to appear; which notice shall be given to each juror in person, or be left at his usual place of residence, a copy of which notice, with his certificate stating when and in what manner the original was served, shall be returned by the said marshal to the court before the commencement of the term for which the said jurors were drawn.

SEC. 7. *And be it further enacted*, That in case either of the officers whose duty it is to make out the lists aforesaid, shall neglect or refuse to act, or in case either of them shall be interested in any action or proceeding pending in the said circuit or criminal court, the chief judge of the circuit court shall appoint a fit and proper person to discharge the duty instead; and if the persons selected as jurors do not attend, the court may order the marshal to summon other respectable tax-payers, possessing the other legal qualifications, to supply the deficiency. And if at any time there should not be, by reason of challenge or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose.

SEC. 11. *And be it further enacted*, That the names on the lists specified in the second section of this act shall be selected, as near as may be, from among the citizens of the several wards of the cities of Washington and Georgetown, and the three divisions of the county of Washington outside the limits of said cities formed by the Eastern Branch of the Potomac river and Rock creek, in proportion to the number of taxable inhabitants residing in said wards and districts, respectively.

Now, if your honor please, we submit the following propositions:

First. That the jurors constituting this panel were not selected in the manner required by the act of Congress, to which your honor's attention has been called.

Second. That the jurors were not drawn in the manner required by this act of Congress.

Third. That the officers have failed to preserve and perpetuate, as required by this act, the list which they are required by the act to prepare, reduce to writing, and safely keep, to hand over to their successors in office; and,

Fourth. That the box has not been sealed, as required by the act of Congress, to which your attention has been called.

Mr. BRADLEY. Is that in the affidavit, that the box was not sealed?

Mr. PIERREPONT. Yes, sir.

Mr. BRADLEY. It had escaped my attention.

The DISTRICT ATTORNEY. Now, if your honor please, in regard to the first proposition, you will find that the law requires that the jurors who are to serve, either in the circuit or criminal court, for the District of Columbia, shall be selected by the three officers, constituting a board for this purpose. Congress evidently did not intend to leave the selection of jurors to any one officer, or any one person, but in so many words, it charges the duty of selecting the jurors upon the three officers named—the register of the city of Washington, the clerk of Georgetown, and the clerk of the levy court of the county of Washington.

Your honor understands the mode in which it is done. The register of the city of Washington makes out a list of four hundred persons, whom he, in the exercise of his discretion, shall think best qualified to serve as jurors. The clerk of Georgetown makes out a list of eighty; the clerk of the levy court makes out a list of forty; and from these three lists, thus prepared by these officers, by their joint action, the jurors are selected. Then, if your honor please, that being the case, let us see if this requirement of the law has been complied with.

Your honor will observe from the affidavit of Mr. Douglass, (and surely, sir, there is no more faithful and intelligent officer than he is, but he may have misapprehended this law,) that he selected four hundred names, wrote them down upon separate pieces of paper, and deposited them in the box without communicating with the clerk of the levy court, or the clerk of Georgetown, with whom the law requires him to co-operate in making the selection of jurors. In other words, according to the affidavit which has been read here, he selected the names of four hundred persons to serve as jurors, in which selection neither the

clerk of the levy court, nor the clerk of Georgetown, had any voice. It is the act, then, of one man, whereas the law requires, if your honor please, and very properly, as we conceive, that it should be the act of three men. You will see, sir, from the language of the act, that it was the intention of the national legislature that it should be the joint action of the three officers charged with the important duty of selecting persons, who should represent the community, in the administration of justice, as jurors. They were unwilling to intrust this important duty exclusively to the discretion of a single officer. Not only has this discretion been, in violation of law, exercised by one, but, sir, according to this affidavit, it further appears that a similar mistake was committed by the other two officers. Mr. Laird, the clerk of Georgetown, selects eighty persons; Mr. Callan, the clerk of the levy court, selects forty; and thus the case is presented to your honor of four hundred jurors selected by one man, eighty jurors selected by another man, and forty jurors selected by a third man, when the law distinctly requires that it should be the joint action of all.

Then, if your honor please, if this affidavit is worthy of your confidence, this is a fatal objection to the present panel.

But, again, sir, the section to which I called your attention specifies distinctly the mode in which these jurors shall be drawn. Congress has thought proper that jurors who shall be charged with the highest and most solemn duty of an American citizen, who are intrusted with the lives and liberties of their fellow-citizens, should be selected by one board, and drawn by another officer. But how is it in this case? One of the men who selected a portion of the jurors, according to the testimony of Mr. Douglass, assumes to discharge the duty which is devolved by law upon the clerk of the circuit court. He selects, and then draws. The law says the three officers, to whom your attention has been called, shall select, and the clerk of the circuit court shall draw. It is unnecessary that I should detain your honor further upon this point, for it is clear and conclusive.

Again, sir, in the discharge of this important duty, Congress has very wisely provided for all the details. It may appear to your honor at the first glance to be unimportant, but upon a moment's reflection you will see that it is not so. Congress having prescribed how these jurors shall be selected; how these names shall be deposited, it also designates the officer by whom the jurors are to be drawn, and when and where such drawing is to take place. We submit, therefore, that this important requirement of the law has not been complied with by the officers charged with the performance of the duty. These three points we think are fatal objections to proceeding with the present panel.

Again, if your honor pleases, Congress has thought it proper that the foundation of the action of these officers should be preserved and perpetuated, and very wisely. The officers charged with this important duty, and invested, as your honor will observe here by the language of the act, with a discretion, shall preserve and perpetuate the testimony, or rather the lists of the names from which they made their selection; and why?

Mr. PIERREPONT. No list was ever made.

The DISTRICT ATTORNEY. Exactly, I am coming to that. The law requires, not only that they should make a list, but that they should preserve and perpetuate it, handing such list over to their successors, when they shall retire from office. If through misapprehension, or mistake, or for any other reason, these officers fail to properly discharge this important duty, the court having a supervisory power over their action may correct it, if it be capable of correction, but if they fail to reduce these names to writing—if they fail to perpetuate them, and therefore cannot now, when called upon, submit them to the inspection of your honor, how can this court, charged by the law of the land with a supervisory power over the discretion intrusted to these officers, discharge its duty? These lists, according to the affidavit, were never made—at least there

is no certainty of their having been made. They cannot be produced at all events.

This failure of duty, then, on the part of these officers, is fatal, because the testimony, or rather the first preliminary step required by the act of Congress to be taken, has not been taken; and second, because your honor cannot be advised from these lists, of the selections which were really made. Therefore, if in point of fact, there has been either through fraud or partiality, which we do not charge in this case, or misapprehension of the law, such dereliction of duty as we have stated, it will be impossible for your honor to discharge that supervisory duty, which is clearly incumbent upon every court in the administration of justice.

I do not know that it is necessary that I should detain your honor further. We think these objections are fatal. It may be proper for me to state in this connection that the object of this motion is not delay. We are ready and anxious for a trial, and may I be pardoned for saying here that never at any stage of this case, have I been disposed to delay it any longer than we thought necessary for the promotion of the cause of justice and of truth. I repeat we are ready now, but we want a jury summoned according to law, so that no objection can be made hereafter, either by the government or the accused, whatever may be the event of this most important and solemn trial. To show your honor that there need be no delay, I will call your attention to the 5th section of the act, which gives the court plenary powers to proceed at once, if there has been such informality in the selection of the jurors by the officers charged with that duty; or if from any other cause it is found impossible to proceed with the panel so selected, the court may order the marshal to summon talesmen at once. I will read.

Mr. Carrington then read the 5th section as follows:

SEC. 5. *And be it further enacted*, That the said register and clerks, and the clerk of the circuit court, shall, at least ten days before the commencement of each term of the circuit or of the criminal court, meet at the City Hall, in Washington city, and then and there the clerk of the circuit court shall publicly break the seal of said box and proceed to draw therefrom the names of so many persons as are required; and if the jury about to be drawn is intended for service in the criminal court, the twenty-three persons whose names shall be first drawn shall constitute the grand jury; and the twenty-six persons whose names shall next be drawn shall constitute the petit jury for that term; but in a capital case where the said panel shall have been exhausted by reason of challenge or otherwise, the court before whom such capital case is pending may, in its discretion, order additional names to be drawn; and if all of the names in the box shall have been drawn out and no jury found, the court may order the marshal to summon talesmen until a jury shall be found. And if a jury be required for the circuit court, the twenty-six persons whose names shall first be drawn shall constitute the jury for that term, and the names of the persons drawn as aforesaid shall not be again placed in such box for the period of two years. If any person whose name is so drawn shall have died or removed from the District, or has become otherwise disabled from serving as a juror, the said register and clerks shall draw from the box another name, who shall serve instead; and after the requisite number of jurors shall have been so drawn the said box shall be again sealed and delivered to the clerk of the circuit court as aforesaid.

That is what we now ask your honor to do. I have authorities showing that the whole matter——

The COURT. That relates to the entire panel?

Mr. PIERREPONT. Yes, sir.

Mr. BRADLEY. Before we proceed at all to the discussion of the questions raised upon this motion and affidavit, I beg leave to submit to the court that, as

Mr. Douglass is at quite a convenient distance from here, he be sent for and examined by the court, in order that we may see what the facts really are. I am not apprised, up to this moment, that they have departed from the mode of preparing and drawing juries observed from the year 1862 up to this time. I take it for granted that they have pursued the same course all the way through. I would be very glad to have the opportunity of cross-examining the witness. I see the affidavit is in the handwriting of Mr. Wilson, the assistant district attorney, and I should like to have Mr. Douglass brought in and examined as to particulars. I think it is best to first ascertain the facts before we attempt to apply the law to this particular case.

Mr. PIERREPONT. We do not see how there can be any objection to that, if your honor sees fit. I think it is a very proper request.

The COURT. Do I understand the counsel for the prosecution to agree to an oral examination?

Mr. PIERREPONT. I know nothing as to what the custom here is, your honor. Whatever is right and fair in the matter, of course, we want done. If such is the custom, we assent to it; if such is not the custom, we do not. Where I am in the habit of practicing it is the custom to bring on the affidavit before the court where a motion is made.

The COURT. I cannot speak as regards the custom here, except for the four years past. In that time there has been no custom at all, for the simple reason that no case of this sort has ever been presented to the court. I understand from Mr. Middleton, who has been deputy clerk of the court for a number of years, that no case has ever occurred under his observation. I presume, however, that it is to be viewed in the same light as a motion to change the venue. In that case the motion is granted upon affidavit; oral explanations are not customary. I have never myself, in my practice anywhere, seen a case of the sort. It is right, in a case of this character, that everything which forms the basis of a decision by the court should appear upon the record. For that reason, I presume, the law requires that motions of this kind should be grounded upon written testimony.

Mr. BRADLEY. I will simply state, in reply to the suggestions thrown out by your honor, that the reporter is here to take down the affidavit of the party. The examination and cross-examination so taken down, being written out in regular order among the other proceedings, will thus appear as an affidavit on record, duly signed by the party, if deemed necessary. I am not aware of any case in my experience of this kind. We raised the question once, many years ago, but it was disposed of without any examination into the facts. That was a challenge of the array by the prisoner, so far as my memory serves me, and the case went on. We desire, however, to have spread upon the record all the facts of this case, what construction this law has received, and how it has been interpreted and carried out since its passage to this day. I think we can prove very clearly that in this instance these officers have followed the uniform practice since the passage of the act, in June, 1862. How far that may tend towards the proper construction of the law is another question, to be considered when we come to ascertain what the facts are. What we propose is, to have put upon the record a history of the action under this law.

Mr. PIERREPONT. I suppose, sir, if your honor please if that is the case—and perhaps it is proper, as the learned counsel suggests, that it should be placed upon the record for future guidance—that it is necessary it should be by affidavit, to be regularly filed. The district attorney and myself, upon consultation think, accepting the theory of the learned counsel, that the facts, with the decision, should be preserved as a part of the record; that it should be by affidavit, and we feel impelled, therefore, to ask the court that such a course be pursued.

Mr. BRADLEY. And in that view I desire that the affidavit may be made in open court, in the presence of the counsel and the prisoner, taken down by the reporter, and afterwards read over to the witness and signed by him. That can be done very rapidly, and I hope, as it is a matter entirely within the discretion of your honor, that such a course will be pursued.

The DISTRICT ATTORNEY. Will your honor please defer your ruling for a moment until I have an opportunity to consult with my associate?

After a brief conference, Mr. Pierrepont said: If your honor please, with the understanding that it be, as counsel suggests, taken down here in the presence of the court and counsel, and made to become a formal affidavit, to be placed on the files of the court, we consent.

Mr. SAMUEL E. DOUGLASS was then sworn by the clerk, when the affidavit, which had been read to the court, was handed to the witness, with the request that he would read it, and state if it was correct in all particulars.

Witness did as requested, and then stated that it was correct.

He was then examined as follows:

By Mr. BRADLEY:

Q. Mr. Douglass, how long have you been a register of the city of Washington?

A. Since the 1st of July, 1861.

Q. You were then register at the time of the passage of this act of 1862, providing for the selection and drawing of jurors?

A. Yes, sir.

Q. State whether, in the drawing of this last panel of jurors, you pursued any new practice, or whether you observed the old one?

A. The old practice. The same, of course, that I had always pursued in selecting jurors, viz., placing their names on slips of paper, and then putting those slips in the box.

Q. From the time of the passage of the act?

A. Yes, sir; from the time of the passage of the act.

Q. Do you recollect whether, shortly after the passage of that act, the register of the city, the clerk of Georgetown, and the clerk of the levy court did or did not take the advice of the judge of the old circuit court as to the mode of discharging their duty?

Mr. PIERREPONT. Please wait one moment. I do not think the question is a proper one. I do not propose to discuss the matter, but design simply to make the objection, and allow the court to decide upon it, without argument.

The COURT. I cannot see that it has any relevancy to the matter.

Mr. BRADLEY. It may be relevant to this extent, your honor, that if the court then having jurisdiction, immediately after the passage of the act, gave construction to it, and these officers acted in pursuance of that construction, and have since that time followed the same, and have done in this, as in other instances, as the court advised them to do, it might have some effect, perhaps.

Mr. PIERREPONT. The records of the court must determine its decisions, and not the actions of the witness.

Mr. BRADLEY. That is all very true. The records of the court must show in the cases between parties; but not with regard to a matter outside of the court, of the records of the court, and not in a judicial proceeding.

The COURT. I suppose, Mr. Bradley, you are directing your inquiry to some extra-judicial opinion which was given by one or more of the judges of the old circuit court.

Mr. BRADLEY. That is it, sir. All three of them were sitting in court. There was no case before them, however, and therefore, of course, the opinion was extra-judicial to that extent.

Mr. PIERREPONT. Of course that would have no binding effect.

Mr. BRADLEY. I do not claim that it would have any binding effect. I simply want to get at the opinion upon which those gentlemen acted, and which was given at the time of the passage of the act. I would state further, sir, that, even had this opinion been announced from the bench, it, of course, would not control your honor's decision on the same question; but——

Mr. PIERREPONT. It could not be evidence then in any shape.

The COURT. I do not see that it has any bearing.

Mr. BRADLEY. I will not press it, then, your honor.

The examination of the witness was then resumed by Mr. Bradley:

Q. I understand you to say, Mr. Douglass, that in drawing the jurors for the present term of the court, you made out your list of four hundred tax-payers of the city of Washington?

A. No, sir; I do not know that they were all tax-payers.

Q. Were you not limiting the list to tax-payers?

A. Not that I was aware of.

The DISTRICT ATTORNEY. The act says that should be done.

WITNESS. I did not look into the books in the collector's office to ascertain whether they were all tax-payers or not.

Q. Have you any recollection of putting any one on the list who was not a tax-payer?

A. I have not.

Q. From that list of persons, thus made out, you afterwards wrote on little slips of paper to the number of four hundred, each name, rolled them up, and, without consultation with the clerk of Georgetown, or the clerk of the levy court, deposited them in the box?

A. We each deposited our quota in the box—Mr. Callan, Mr. Laird, and myself.

Q. But neither of them saw your list?

A. No, sir.

Q. Did you see theirs?

A. No, sir.

Q. Do I understand you to say Mr. Laird brought in a list of eighty, and Mr. Callan forty?

A. Yes, sir; I think that is what the law requires.

Q. They were already rolled up?

A. Yes, sir.

Q. And each of you deposited the number required by law; you 400, the other 80, and the other 40?

A. Yes, sir.

Q. At the same time?

A. Yes, sir.

Q. In the presence of each other?

A. Yes, sir.

Q. That has been your mode of executing that law since the time of its passage?

A. Yes, sir.

Cross-examination by Mr. PIERREPONT:

Q. Mr. Douglass, you didn't see the names of those that the clerk of Georgetown deposited?

A. No, sir; they were rolled up, and a piece of string tied round them.

Q. You did not see the names of those that the other clerk deposited?

A. No, sir.

Q. And they did not see the names you deposited?

A. No, sir.

Q. Were those that they deposited the names of tax-payers?

A. I do not know.

Q. Were those that you deposited the names of tax-payers?

A. I am not certain. There may have been some that were not tax-payers.

Mr. MERRICK. I desire to interpose an objection here. The counsel asks Mr. Douglass whether he saw the list that was presented by the officer of the corporation of Georgetown, and whether that officer saw the list that was presented by Mr. Douglass. It is to that inquiry that I desire to make an objection; and suggest to your honor its inadmissibility upon this ground: Mr. Douglass testified that these three officers were present, and together engaged in discharging the duty which the counsel upon the other side maintain devolved upon the three jointly.

I understand their position to be this: That the act vested a sort of judicial or discretionary power in the three, which one could not exercise without the co-operation of the other two; and that as the power was exercised by one without the co-operation of the other two, it was improperly exercised, and therefore vitiates the act done.

Now, the register of the city of Washington testifies upon the stand that when this duty was discharged, it was discharged by the three; that the three were together, and together deposited certain names in the box, in which, according to law, they were to be deposited, and from which they were to be drawn. Now, I submit to your honor, that it is not competent for the counsel to go behind, and ascertain from one of the parties how far they exercised judgment or discretion. They were present, acting together; and the act being done in the presence of all, is, according to law, as a presumption of law, the act of all under the statute; and it is not competent for the counsel to go behind the doing of the act thus done conjointly by the three combined, and ascertain what part of the judgment of each entered into the execution of the act. It is enough that they were present at the doing of the act, and that the act was done.

Mr. PIERREPONT. My learned friend seems to be arguing anew the general proposition. If he confines his argument to the question that I put to the witness, that is one thing. I do not intend at this stage, until the evidence is before your honor, to argue the general proposition; and do not propose to answer him upon that question. I have not finished the re-examination of the witness, but was interrupted, as I understood, by the learned counsel objecting to the line of examination being pursued. My question was as to the mode in which the jurors names were put in the box, and which he has answered Now, I understand, he substantially moves to strike out——

Mr. MERRICK. If the counsel will allow me a single moment. I did not interpose the objection at an earlier moment for the reason that my associate was engaged, and I had not the opportunity of consulting with him.

Mr. PIERREPONT. I am not objecting on the ground that the gentleman's motion comes too late.

Mr. MERRICK. I am objecting to the testimony, and not arguing the general proposition.

Mr. PIERREPONT. My learned friend, run somewhat, I thought, perhaps inadvertently, into the general proposition.

The question as to the mode of selecting these jurors is surely a proper question. I do not think it admits of debate, and I do not think your honor will require it to be debated.

The COURT. I can see no impropriety in the question which you put. The question which is addressed to the court is as to whether these parties upon whom the law devolved this duty of selecting the 520 names that are to go into the general jury box acted together, or acted in their individual and separate capacity. The question is one which you are seeking to inquire into, and one

which the court is to pass upon in order to ascertain whether the jury has been duly selected or not, and any questions which are directed to that point must be considered as relevant and admissible.

Mr. PIERREPONT. I will then proceed with one or two other questions:

Q. You have just read over your affidavit?

A. Yes, sir.

Q. What do you say to the court as to its being true?

A. It is true.

Re-examined.

By Mr. BRADLEY:

Q. It is said in that affidavit that you have searched for the list made out by you. State to the court whether, in point of fact, you did make out a list and put it away for preservation.

A. I think I did. I divided the wards up on sheets of foolscap paper, dividing the city as near as I possibly could with regard to the number of men. I then took the names and put them on separate slips of paper and rolled them up.

Q. You are distinct you did make out such a list, and have searched for it, but cannot find it?

A. Yes, sir; I am. I might be able to find it in the course of time.

By Mr. PIERREPONT:

Q. You say "paper or papers," in this affidavit; you made memoranda, did you?

A. Yes, sir; that is what they were, on separate pieces of paper, the first ward on one paper, and the second ward on the other, and so on.

Q. These separate pieces of paper, then, you did not show to these other gentlemen?

A. No, sir; the names were all rolled up.

Q. It has not been your habit to preserve these papers?

A. We have laid them aside in the office, some of them; we have generally done so.

Q. Some of them, you say?

A. All of them; we have generally made them out, and laid them aside.

Q. You do not know what you have done with this last list?

A. We laid it aside somewhere among a lot of old papers.

Mr. BRADLEY. I beg leave to suggest that this motion has taken us entirely by surprise. We relied upon the uniform practice in the execution of this law from the time of its passage, and therefore have had no reason or disposition to look into the mode in which the jury has been selected in this particular case—more especially as more than one person has been on trial for his life during this term of the court, and before this very jury. I do not know as there were any convictions in capital cases, but there were certainly capital trials.

The DISTRICT ATTORNEY. Only one—Cleaver.

Mr. BRADLEY. The district attorney says only one; one is enough at any rate. I repeat that this motion takes us entirely by surprise. We came prepared to try the case. And with regard to the motion before us, a grave question lies at the bottom of it: whether or not, if your honor should be of opinion with the counsel on the other side that the jurors have not been properly summoned, we can go to trial unless the objection comes from the defendant, he having a full knowledge of the facts; and whether a verdict against him, under such circumstances, would not be just as conclusive as if the jury had been regularly empannelled. I am well aware that the current of decisions is the other way, and that where life is concerned there can be no waver on the part of the accused. There are, however, decisions, and very well-reasoned ones, supporting the right of the court to proceed to try, convict, and execute, where the prisoner, knowing all the facts, makes no objection. It is with this view that I ask your honor to

indulge us for time to look into these two questions: First, the construction of the law; and, second, as to the effect which may be produced in the event of your ruling the question of law against us, and in favor of the United States; that is, whether it is a thing possible for the accused to submit his case to the jury empannelled, and which has served during this term.

Mr. PIERREPONT. If your honor please, any indulgence that the counsel shall ask, that your honor thinks reasonable, we are, of course, disposed not to interfere with in the least. I have no doubt this motion has taken them by surprise, and I see by the remarks which the counsel (Mr. Bradley) has already made, that he is quite familiar with the law on this subject, and I think, therefore, is entirely apprised of the fact that if this jury has been illegally empanelled, that if he should stipulate, if all his associates should stipulate, and the prisoner should stipulate to abide by the verdict, the verdict would, notwithstanding, be utterly worthless. You cannot, for grave reasons of public policy, permit any illegal conviction for the taking of the life of one of our citizens to stand a moment if the verdict has not been rendered strictly in accordance with law, and no stipulation of counsel or prisoner can relieve it. I believe if anything is settled lately, that is well settled. My learned friend suggests that he has seen some cases in which there were some decisions looking the other way; I do not know what he alludes to.

Mr. BRADLEY. I beg my learned friend to understand that I do not know the fact that such a conviction is void in law; if I did, I certainly would not stand up here and controvert it. What the legal conclusion may be, is the very thing I ask time to look into.

Mr. PIERREPONT. Certainly; I did not say that the learned counsel "knows" it.

Mr. BRADLEY. You did say so.

Mr. PIERREPONT. From the remarks that the learned gentleman did make, I inferred that he knew it. In my view of it—and I certainly am in some measure responsible for the advice I may give here to the government—I should not hesitate in saying publicly as well as privately, that a verdict of a jury thus illegally empannelled would be altogether worthless, and that no man could be executed upon it, or suffer any punishment.

Mr. BRADLEY. I would like to know what is to be done with all those who have been already executed.

Mr. PIERREPONT. I am in no way responsible for what has been done.

The DISTRICT ATTORNEY. If your honor please, my friend (Mr. Bradley) needn't trouble himself about that.

Mr. BRADLEY. I will only say that it has been the uniform practice since the passage of the act, and you have hung a dozen men under it.

The DISTRICT ATTORNEY. Oh, no, not quite so many as that. And I will only say that it is never too late to do good. I don't want to hang any more in that way.

Mr. BRADLEY. If your honor please, the construction of this law is a very nice question, and although our friends on the other side are entirely confident about it, I will simply say that what has fallen from them thus far, has not satisfied our minds, and we therefore ask until to-morrow morning to look into that question. It, sir, presents a very grave question, whether or not for the last five years, every man who has been hung has been hung illegally.

The DISTRICT ATTORNEY. It is proper for me to state that we are willing to grant any indulgence which the counsel may ask, and which the court thinks proper.

The COURT. We will give you, then, Mr. Bradley, until to-morrow morning at 10 o'clock.

Thereupon the court adjourned.

JUNE 11, 1867.

The court met at 10 o'clock a. m.

Mr. BRADLEY. When the motion was submitted yesterday, on the part of the prosecution, to quash the array of the panel in this case, we were taken by surprise, as we well might have been, under the circumstances. As far as I can ascertain no such motion was ever made in this court. The particular form of the motion did not attract my attention at the time, but upon looking at it since, I find that it is not only novel, but that there is no precedent for it either in English or American practice. In order to present to the court a case on which the court can decide whether the jury has been properly summoned, returned, or impanelled, the motion must state facts and not conclusions of law. I will read it to your honor, and beg leave to call the attention of our brethren on the other side, to a fatal defect in the form of the motion, in order that they may so remedy it as to place the question in a form in which it may be reviewed hereafter, if it should become necessary. The motion is in these words:

In the Supreme Court of the District of Columbia. The United States *vs.* John H. Surratt. Indictment, murder.

"And now, at this day, to wit, on the 10th day of June, 1867, came the United States and the said John H. Surratt, by their respective attorneys, and the jurors of the jury empanelled and summoned also come, and thereupon the said United States, by their attorneys, challenged the array of the said panel, because he saith that the said jurors composing said panel were not drawn according to law, and that the names from which said jurors were drawn were not drawn according to law; whereupon he prays for judgment, and that said panel may be quashed."

Now, if the court please, the facts upon which these propositions rest, must be stated in the motion. They are traversable, and upon them an issue may be made. When the facts are presented, the opposite party may either take issue or demur.

I rise, therefore, for the purpose of calling the attention of my brethren on the other side to the form of their proceeding, and to suggest to them that it be so amended as to set out the facts upon which they rely for the court to pass upon the facts as set forth in the motion or plea. I have looked into the English precedents and those of this country, and I think I state the law with precision, that the facts upon which they rely, showing the grounds upon which they appeal to the judgment of the court to set aside the panel, must be stated upon record. And that is not supplied by the affidavit, for we could neither take issue upon the affidavit which they have presented, nor could we demur; and it is the right of the opposite party to demur or take issue, as they see fit. I refer your honor to I Archibold's Criminal Practice, p. 545, on this point. On p. 547, is this note.

"'The challenge to the array must be in writing. It may be in this form: 'And now, on this day, to wit: on ——, come as well the aforesaid J. S. as the aforesaid J. N., by their respective attorneys, and the jurors of the jury impannelled, being summoned, also come; and thereupon, the said J. N. challengeth the array of the said panel, because, he saith, [here set forth the matter of challenge with certainty and precision,] and this he is ready to verify. Wherefore, he prayeth judgment, and that the said panel may be quashed.'"

Then follows a long note, in which this whole case is presented, showing that it is absolutely necessary in order to make an issue upon which the court may determine whether the proceedings have been strictly in accordance with the law or not, that the facts shall be set forth in the motion.

Mr. PIERREPONT. The learned district attorney is not now in court, but will be here presently. I quite agree with my learned friend that the facts must be brought before the court upon which they are to determine the question. It is upon the facts and conclusions of law that the question is to be determined. The only point now is as to the mode by which the facts shall be brought before

your honor. There is no doubt but in an ordinary suit at law, where the object is to get it in such shape that a demurrer will lie, the practice is to set out, as my friend has suggested, the evidence for the purpose of raising a demurrer. Whether the practice in this court is such that your honor will require the evidence to be set out in the motion, or brought before you by affidavit, as has been done in this case, I have no knowledge, nor do I deem it of importance except to conform to the practice which is usual in such cases. I do not very well see how it can make any possible difference whether the affidavit is attached to the motion or be not pinned to it.

Mr. BRADLEY. My suggestion was that the substance of the affidavit should be incorporated in the motion. I say that the facts relied upon must be incorporated into the motion to enable us to take issue.

Mr. PIERREPONT. It is certainly the same thing; it makes no difference how you put the affidavit in, whether you write it over again or attach this paper to the motion. It is the substance, not the form, to which we are directing the attention of the court; and there is no difficulty in getting at what your honor may think is the proper form. I quite agree that the substance is the fact, and the fact is to be ascertained in such mode as your honor may think is the correct mode. As I have said, I am not familiar with the practice of this court. The assistant district attorney is present, and may perhaps suggest what it is in this respect. I simply wish that whatever is the proper and usual mode of getting at the fact shall be followed.

Mr. WILSON. Your honor will observe that the form given in the authority quoted by Mr. Bradley has been followed in this case. The requirement there is that the matter of challenge should be set forth with certainty and precision. That is the requirement, and if there is any other requirement more specific than that, I have been unable to find it. If this motion does set forth the matter of challenge with certainty and precision, it complies with the requirements laid down in the text-books. It is, however, a question for your honor to pass upon, and if, upon inspection of this motion, your honor is of opinion it does not specify with certainty the cause of challenge, we will, of course, in accordance with the suggestion of your honor, amend it.

Mr. BRADLEY. If my brethren will show me how we can plead or take issue upon the motion in its present form, they will relieve me of the difficulty under which I am laboring. If they will show me how we can plead to an affidavit annexed to a motion, I shall be equally pleased; but until they show me some form of plea by which we can put in issue the fact upon which the law is to rest, I must say that under the practice of any court that I ever heard of this is a novel proceeding to me. To aver that a thing is contrary to law and fail to state the facts upon which the motion, or application, or plea, or whatever it may be called, is based, is, I confess, a novel proceeding to me.

Mr. PIERREPONT. I do not understand the motion to be a plea in any sense in which that term is used. I understand the motion to be addressed to the discretion and judgment of the court, and when the facts on the motion are brought before the court on the one side, they may be denied on the other. If one side uses an affidavit as a means of enlightening your honor as to the facts upon which they base the motion, the other side may use an affidavit for the purpose of showing that the facts relied upon are not true; or they may, if the court so direct, bring witnesses for that purpose. I do not understand that in the motion before the court the forms of pleading are to be complied with in the same manner as in an action at law. I am not aware that such is the practice.

Mr. BRADLEY. I wish to ask my learned friend whether, in such a proceeding as this, the opposite party is entitled to an issue on the question presented?

Mr. PIERREPONT. Undoubtedly.

Mr. BRADLEY. Then I ask how can they have an issue upon a motion of this sort which was that a proceeding is not in accordance with law, without setting out the facts upon which the motion is based?

Mr. PIERREPONT. Precisely as in all other cases. The motion is made, and the affidavit upon which it is based is read. The other side presents an issue by presenting other affidavits or other evidence, and then the law arises upon the facts as presented.

Mr. BRADLEY. I mean in an issue to be tried by triers.

Mr. PIERREPONT. I mean an issue to be tried by the court.

The COURT. It would seem from this note of Mr. Woodeson's that there is quite as much formality to be observed in motions of this sort as in the pleadings in any cause. I read from the note referred to by Mr. Bradley in first Archibold, "As Sir James Burrow has not given the record at length, I have set down the form of these challenges (which is not of every day's experience) from my manuscript precedents, and thereupon the said S. B. prayeth judgment of the panel aforesaid, because he says that the said panel was arrayed and made by J. C. and J. D., sheriffs of the said city of Chester, and that the said J. C. and J. D. were at the time of the making of the panel aforesaid, and continually, from thenceforth, hitherto have been, and still are citizens and freemen of the said city of Chester; and this the said S. B. is ready to verify; wherefore he prays judgment, and that the panel aforesaid may be quashed. And the said P. E. and H. H. say that the matter in the aforesaid challenge to the array of the said panel contained, is not sufficient in law to quash the array of the said panel; and this they are ready to verify; wherefore they pray judgment, and that the array of the panel may be allowed by the court here. And the said S. saith, for that he hath above alleged a sufficient challenge to quash the array of the panel aforesaid, which he is ready to verify, which said challenge the said P. and H. do not, nor doth either of them, deny, nor to the same in any wise answer, but do, and each of them doth, altogether refuse to admit that averment; he and the said S. prays judgment, and that the array of that panel may be quashed."

It would look to me, if we are to be guided by these precedents, as if the facts and not the law should be set out in this motion, and the conclusions of law are to be drawn from the facts as set forth.

Mr. BRADLEY. Now, if your honor please, as we are exceedingly anxious on both sides to bring this case to a hearing as soon as possible, I submit to the gentlemen on the other side, that they incorporate substantially the facts set forth in the affidavit of Mr. Douglass in their motion, and then we will be ready to proceed.

Mr. PIERREPONT. We are quite ready to do that.

Mr. BRADLEY. I have been informed by Mr. Douglass that he desires to amend a single statement in his affidavit. I do not know that it is in any important particular, but I suggest that he have permission to make his statement to the court now.

The COURT. He may do so.

Mr. S. E. DOUGLASS then came into court and made the following statement:

I wish merely to say that when I spoke of drawing the jurors from the box, it was always done in presence of Mr. Meigs, the clerk of the court.

The COURT. You state in your affidavit which was filed yesterday morning and made the ground for challenging the array, among other things, that this jury now in court was drawn by the clerk of Georgetown, without stating that it was drawn in presence of anybody; and you now wish to interpolate there that it was done by him in the presence of the clerk of the supreme court of this district.

WITNESS. Yes, sir, and in the presence of the clerk of the levy court of the county and of myself as register of this city.

Mr. BRADLEY. I will also state that I have looked at the original record and that the head of the certificate is in the handwriting of Return J. Meigs, and that the names of the jurors are in the handwriting of Mr. Williams, a clerk

in his office, and that it is signed by Mr. Douglass as register, and by the clerk of Georgetown, and the clerk of the levy court. I suggest, if there be no objection, that the correction now made by Mr. Douglass be entered in the affidavit.

Mr. PIERREPONT. We have no objection.

The COURT. It will be so entered.

Mr. BRADLEY. The motion now having assumed a shape in which we can plead, we are ready to do so.

Mr. Bradley thereupon entered the following plea:

UNITED STATES, *vs.* JOHN H. SURRATT. } In the criminal court of the District of Columbia, No.—

And thereupon the defendant saith the said motion is bad in law and in substance. The facts stated do not constitute any ground in law for a challenge of the array.

BRADLEY & MERRICK,
For Defendant.

Mr. PIERREPONT. We join in the demurrer.

Mr. MERRICK. When the motion was made on yesterday, the high respect that I entertained for the learned counsel upon the other side induced me to apprehend that it involved a question of some difficulty, especially in view of the assurance, which I was exceedingly glad to hear given by the United States district attorney, that the motion was not for the purpose of delay, but upon an examination of the question my apprehension of any difficulty involved in it as a legal proposition was speedily removed, and I beg to suggest to my learned brothers upon the other side, and your honor, that if there is anything in the motion, and it should prevail as a valid objection to a petit jury, the same objection will apply to the grand jury that found the indictment, and on the decision of your honor, should it be to sustain the ground of challenge to the petit jury, we may deem it expedient to change the plea of not guilty and to plead specially to the indictment. It is therefore, in point of substance, as to the result not so very material to the prisoner, for the success of the motion of my learned friends on the other side may put him at large. It is somewhat remarkable that the objection now presented to the regularity of the manner in which this jury was drawn should be presented for the first time at this late day. Since the passage of the act of 1862, as Mr. Douglass tells us, the jurors have been uniformly drawn, and the lists uniformly prepared in the same manner in which the list of this jury was prepared, and in the same manner this jury was drawn; and if this jury is illegally constituted, and not authorized to return a verdict, your honor has been dealing somewhat inconsiderately with the lives and liberties of the citizens of this country ever since 1863, when your honor came upon the bench. You have hung one man and sentenced scores to the penitentiary, and you are now to be gratified with the intelligence that in all these acts in the taking of human life you were guilty of simply killing, and in all these adjudications inflicting the penalty of incarceration you have pronounced upon offenders, you are guilty of participation in the act of false imprisonment. A pleasing reflection to your honor, and a matter for serious consideration for the jurors who participated with you in these crimes. But I apprehend there is no such result following from a just construction of this statute, and I shall very briefly submit to your honor the views that have suggested themselves to me.

The first question that arises is upon the construction of the statute. My learned brothers upon the other side contend that the selection of the names that are to be deposited in the jury box is a duty devolving by the law upon the register of Washington city, the clerk of Georgetown, and the clerk of the levy court of the county, and that this duty must be performed by all three conjointly, and that a part of this duty having been performed by one of the three, the duty

was illegally performed, and the conclusion of that duty are null and void. Your honor will observe that the first section of the act provides: "That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown and the levy court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions as they shall judge best qualified to serve as jurors in the courts of said District."

This requirement of the law is addressed to these officials respectively. The register of Washington is to make a list of such of the white male citizens, tax-payers, as he thinks best qualified to serve as jurors. So far as the making of the list itself in the first instance is concerned, it cannot be pretended that any part of the duty in regard to it has devolved upon any one else than the register as to the list of Washington, the clerk of Georgetown as to the list for Georgetown, and the clerk of the levy court as to the list for the county, and in the preparation of that list there is a discretionary power left with these several officers to be exercised by each severally, independent of the other within the territory over which the law requires him to perform his duty. The register of Washington has to select from the white male citizens of Washington, tax-payers, such persons as he may think in his judgment best qualified. Your honor will observe that the law does not say that he shall select all that are qualified. It does not say what proportion of those that are qualified he shall select. It does not say how many shall constitute his list, but it provides that he shall make a list of those he deems best qualified; and in the execution of the duty imposed by this law he is required to leave out some, because he cannot select those who are best qualified, without leaving out those who are more indifferently qualified. So with the clerk of Georgetown—so with the clerk of the levy court.

In this first section, then, there is no pretence, there is no ground to maintain that the duty imposed upon these officers is to be performed by them conjointly. The second section provides "that the officers aforesaid shall select from the list of the register of Washington the names of four hundred persons; from that of the clerk of Georgetown eighty persons, and from that of the clerk of the levy court forty persons, which proportion after the year 1863 may be varied from year to year," &c. My learned brethren, while they will concede, and must concede the position advanced in regard to the meaning of the first section, contend that the second section, however, imposed the duty of selecting from the list prepared in obedience to the first section upon the three officers conjointly. They admit, and must admit, that each officer must prepare his own list, but they say that after the list is so prepared by each officer severally, the three are to meet together and conjointly select the number required, from the list so prepared. I submit to your honor that the same construction which applies to the first section must also apply to the second; that the clear and distinct language of the first, aids in relieving the apparent obscurity of the second, and the several duty designated to be performed by these officers severally in the first section, remains a several duty to be performed by them severally under the second section. Each officer has to select from the list he prepares the number of names he is required to have drawn from each list, and I submit to your honor, that the other officers—the clerks of Georgetown and of the levy court—have nothing to do with the selection to be made from the list prepared by the register of Washington. The law has selected three officers of three distinct corporations; the corporations of Washington, Georgetown, and the county are distinct. The law has selected these three officers, and these three distinct corporations, to perform certain duties within their corporate limits, and relating to the corporators. It has imposed the duty upon these officers because they are presumed to know better than anybody else of the qualifications and character of the corporators among whom they live, and it would be a most remarkable

thing if the law should require an officer of the corporation of Washington to enter into the corporation of Georgetown and perform a duty of this character in regard to the corporators of Georgetown. It would be a remarkable thing if the law should require an officer of the corporation of Washington, about whom and about whose official position there is nothing to justify the presumption that he is acquainted with the qualifications and character of the citizens of the county, to go into the county and make from among its citizens a selection of a portion of them who are to perform the high and responsible duties of jurors; but it would be in perfect accordance with reason, common sense, justice, and law, to require the clerk of the levy court of Washington county, who lives in the county, is familiar with the corporators of the county, to select from among those corporators, the persons who are to perform this delicate office, and it is to be presumed from the relation in which these officers stand, that one can in no way aid or assist the other. The reason why they are brought together is, that in the particular of the jury, the jury is to constitue the jury for the three corporations, but in order that it should be wisely and judiciously selected, it is to be selected by the men best competent to make it, most likely to be familiar with the people among whom the selection is required to be made—by the officer of that particular corporation.

But, your honor, it is not necessary that in this case I should take this extreme position in the construction of the law. My second position is, that the three officers, if the construction of my learned brethren be correct, did conjointly perform the duty of selecting from these lists. On yesterday, when it became apparent from the statement of Mr. Douglass, made in addition to his affidavit, that that affidavit was not entirely accurate, and that when the juror names were deposited in the jury box, all three of these officers were present, I objected to the further inquiry as to what particular judgment was exercised by the one or the other in the selection of the names so deposited. My learned brethren on the other side suggested to me that the argument or view I then expressed was applicable to the main question, and should be expressed as an argument upon the main question, and not upon the question of evidence. Whatever might be the view of this statute when that fact was developed, it struck me instantly that my learned brethren on the other side would see at once there was no ground upon which to rest their motion. I supposed, although I had never examined the question at all, that when Mr. Douglass stated these three officers were present at the time, my learned brethren on the other side had been misinformed by the affidavit which they had, and that when the fact was developed that all these officers were present acting together in depositing names in the jury box, it was information that would satisfy them that there was no ground for their motion. My reason for so supposing was this familiar principle, that where three individuals are required by law to perform a *quasi* judicial duty, or a discretionary duty, and the duty is performed, you cannot go back beyond the performance of the duty to inquire how far it was performed by each of the three. Your inquiry is stopped the very instant the fact is developed that the three were present and participated in the duty imposed upon them. How far it appears of what share he had, how far the judgment of one guided the other, and what passed in consultation, are not matters of inquiry by your honor. This board, if board you call it, have rights as well as courts. They are entitled to legal presumption as well as the court, and it is the first time in my professional experience, that I have ever seen the attempt made to inquire how far one of the several parties aided in the performance of the duty that was imposed upon them conjointly when it was shown that all were present. The statement of the question is so plain that argument would only tend to obscure.

I suggest to your honor, as a third consideration, that we are not now inquiring whether these parties (these officers of the law) performed their duty strictly in accordance with requirements of the law, but we are inquiring how far failure

to comply with these requirements vitiates what was done—two very distinct questions; and I maintain that even if this officer failed to comply in every particular with the strict requirements of the law, and yet the duty was performed, that while they may be liable for a failure to obey and observe the law, the act they have done is a valid and binding act. The statute nowhere declares that the panel shall be void. The statute nowhere declares that their action shall be nugatory. It directs certain things to be done, and is what is known to the law as a directory statute. As your honor is aware, the courts have gone to a great extent in construing these directory requirements of the law, with a view to uphold what may have been done under the law. I refer the court to Sedgwick on Statutory Law, from page 371 to page 377, for a very full collection of cases bearing upon this point. I cannot gather from the case decided any fixed general principle, sufficiently clear and distinct, and state to your honor without reference to special cases, other than this, that whenever the court can construe the law as directory, whenever they can uphold the validity of what is done under the law, although not done in conformity to the law, it will construe the statute to be directory. And it has upheld the validity of what has been done, even while punishing the officer for a failure to comply with the mandates of the law. I read from page 377.

"By a paving act, commissioners were empowered to enter into contracts for the work, provided that no contract should be made for any longer term than three years; and the act then went on to declare that ten days' notice of proposals should be given; that the contracts should specify the work, the price, and the time of completion, and should be signed by at least three of the commissioners, and that copies should be kept. It was held that the proviso as to the term of the contract was imperative, but that all the other clauses were merely directory, (Tindal, C. J., saying: "The act says that the contract *shall* be signed by the commissioners, &c.; it does not say that they shall be void unless so signed,") and that a contract was good without them. Here it is obvious that provisions inserted by the legislature for the protection of tax-payers, were nullified by a judicial decision.

* * * * * *

"In Massachusetts, where a statute required the assessors to assess a tax within thirty days after the vote of the tax being certified to them, it was held that the naming the time for the assessment was to be considered as directory to the assessors, and not as a limitation of their authority. So in New York, where a school-tax was voted at a meeting of which no notice was given as required by statute, and afterwards levied, the act was held to be directory merely, and the tax to be well laid. A statute requiring a tax to be assessed, and the tax-list therefore to be made out by the trustees, and a proper warrant attached thereto within thirty days after the district meeting in which the tax shall have been voted, is merely directory as to time.

* * * * * *

"Indeed, the rule has been carried so far as to hold where a statute directed the vote of the common council of the city of New York to be taken by ayes and nays, that the provision is merely directory. And, again, it has been decided that the provision of a statute requiring inspectors of corporate elections to take an oath is only directory. The rule has also been applied to popular elections; an election has been held valid, though the inspectors were sworn not on the Bible but on some other book, though they kept open the polls after the time fixed by law, and committed other minor irregularities."

This, then, will show to your honor the disposition of the courts to uphold the validity of what may have been done by an officer even where he has not strictly complied with the requirements of the law. The requirements of every law are mandatory and should be obeyed, and he who disregards them must disregard them at his peril. But where the law itself does not declare that to be void which

he is required to do, and has not done, in strict accordance with the requirements of the statute, and the doing of the thing affects other parties and the public interests. The law will uphold the act as valid, but may punish the officer as derelict in his duty.

The general principle that statutory provisions may, in certain cases, be treated as purely directory has been recognized in all the States." In regard to capital trials for murder in Michigan, a statute, requiring a circuit judge to assign a day for the trial, has been held clearly directory so far as time is concerned."

In this case the statute imperatively required that a day should be assigned for the trial of the capital cases; the statute was made in favor of the prisoner, in favor of life, and yet the courts uphold the action of one of its officers acting thus in a manifest disregard of this charitable and mandatory requirement of the law.

But I do not deem it necessary, as I stated in regard to the first position, to maintain the third to the extent to which I have carried it. The second, as I have indicated to the court, is conclusive upon this subject. These men were present doing the act, and you cannot inquire into what part was done by one and what part by another. It is their act. The list of jurors was placed in the box by them, and the certfiicate is signed by three men. They have therefore ratified by their own signature what was done; they have, by their subsequent act, declared that this box was made up according to law. Now I ask my learned brethren upon the other side to answer me this question: Suppose three men were to meet together in conclave—suppose the clerk of Georgetown and of the levy court had said to Mr. Douglass, take your list and make out from your list these men from Washington that ought to go in this box, and he had done it, and conjointly with the others deposited the names in the box, would your honor come into court and say these men had not performed the duties charged upon them as *quasi* official duties? Unquestionably not. But, say my brethren upon the other side, he made out no list. He did make a list, call it by what name you please. He made out four hundred names of those he regarded as best qualified in the city of Washington; he was not required to make any more. The number of individuals who should be upon that list or who should compose it were matters exclusively within his own discretion, and when he made out four hundred names it was an exercise of his discretion in the selection of men best qualified to serve as jurors.

But I am consuming time unnecessarily, for the case is definitely settled by the judges of England in their unanimous opinion in the famous case of Daniel O'Connell. I refer to 11 Clark and Finnelly, page 167. Daniel O'Connell being indicted of high crimes and misdemeanors, applied his challenge to the array of jurors, and your honor will perceive that the refusal to grant him the benefit of the challenge to this array was a very hard and possibly a very harsh one.

The challenge of the defendant, Daniel O'Connell, was as follows. "And the said Daniel O'Connell thereupon, in his own proper person, challenges the array of the said panel, because, he says, that at the special sessions heretofore holden in and for the county of the city of Dublin on the 14th of November, 1843, before the right honorable Frederick Shaw, recorder of the said city, for the purpose of examining the list of jurors for the said city for the now current year 1844, pursuant to the statutable enactments in such case made and provided, the clerks of the peace in and for the said city duly laid before the recorder divers, to wit: Twenty lists theretofore duly furnished to the clerks of the peace by the several collectors of grand jury cess within the city, in that behalf duly authorized to make such lists, containing or purporting to contain a true list of every man residing within their respective districts."

Now, your honor, the law under which this challenge was interposed, and according to the requirements by which it was expected to be made available, provided the clerks of the peace for the city of Dublin should lay before the re-

corder certain lists which were to be furnished to the clerks of the peace by the several collectors of the grand jury cess. The lists were to be made by the collectors of persons qualified to act as jurors. The collectors having made out the list were to furnish them to the clerks of the peace, the clerks of the peace were to furnish them to the recorder, the recorder was to certify to the qualification, and from these lists the jury book was to be made out, and from the jury book the sheriff was to collect the panel. This was the law. Now the challenge set forth what I have read to your honor, and goes on to say:

"And that the said several lists respectively were at the special sessions duly corrected, allowed, and signed by the said recorder, pursuant, &c.; and that the several persons whose names are hereinafter mentioned were then and there adjudged by the recorder to have the qualifications hereinafter named, and that the names of the several persons were then and there contained in the said several lists so corrected, allowed, and signed as aforesaid."

Your honor will observe you have now got your list from the collectors of the grand jury cess to the clerks of the peace, from the clerks of the peace to the recorder, and your lists are certified and approved by the recorder. He goes on:

"But that the recorder did not, as by the said statutable enactments is directed, cause to be made out from the said several last-mentioned lists one general list containing the names of all persons whose qualifications had been so allowed, arranged according to rank and property; nor did the recorder thereupon, or at all, deliver such general list containing such names to the clerks of the peace, to be fairly copied by the said clerks of the peace in the same order as by the said statutable enactments is directed, but on the contrary thereof omitted so to do; and that a certain paper writing, purporting to be a general list, purporting to be made out from such several lists so corrected, allowed, and signed as aforesaid, was illegally and fraudulently made out by some person or persons unknown; and that the said paper writing, purporting to be such general list as aforesaid, did not contain the names of all the persons whose qualifications had been allowed upon the correcting, allowing, and signing of said lists as aforesaid by the recorder, but omitted the names of divers, to wit, fifty-nine persons."

Following your list then from the collector of the grand jury cess and clerks of the peace to the recorder, and the recorder having, as your honor observes, approved and ratified these lists, it then appears that the recorder failed to make out a general list and make a copy of the list which he had approved, but that some unknown party made out a list omitting fifty-nine names that were upon the lists approved by the recorder, and that this had been done fraudulently and illegally.

"And the said Daniel O'Connell further says that the several persons whose names were so omitted from the fraudulent paper writing, purporting to be the general list, were, at the time of the return of the collectors' lists, and at the time of the special sessions, and still are severally residents within the said city, and were at the several times, and now are, duly qualified to be, and should and ought to have been placed upon the general list; and that from the fraudulent paper writing purporting to be such general list as aforesaid, a certain book, purporting to be the jurors' book of the said city for the current calendar year, 1844, was made up and framed."

Your honor will see that the jury book was formed from this fraudulent list, and that on that ground the challenge was interposed. The demurrer was filed conceding all the facts—conceding that the lists made out had not been made up by the recorder, that it had been made up by some person unknown, that it had been fraudulently made up for this case, and that from the very list thus fraudulently made up the jurors' list had been taken, and the jury had been summoned by the sheriff. The court below sustained the demurrer. The case went up to the House of Lords, and the lords called upon the judges of England for their counsel. The

judges of England were unanimous in favor of the demurrer, and the lords co-operated with them. The opinion held by Chief Justice D. Tindal, giving the unanimous judgment on the part of the judges will afford to your honor an easy and clear solution of the difficulty presented to you here, while the lord chancellor in giving his opinion coincides with Chief Justice Tindal, and elucidates the subject, as I think your honor will say, to your entire satisfaction. I beg leave to read from a portion of Chief Justice Tindal's opinion. On page 232 your honor will find the question propounded by the lords and the judges. The question is this:

"Is there any sufficient ground for reversing the judgment on account of the judgments of the court overruling and disallowing the challenges to the array, or any or either of them, or of the matters stated in such challenges?"

On page 247 Chief Justice Tindal in his opinion says:

"The answer to the sixth question (ante, p. 232) will depend upon the principle upon which the law allows a challenge to the array of a jury. The only ground upon which the challenge to the array is allowed by the English law, is the unindifferency or default of the sheriff. But no want of indifferency in the sheriff, nor any default in him or his officers was assigned for the cause of challenge upon this occasion.

"The array of the panel is challenged in this case upon the ground that the general list from which the jurors' book is made up, had not been completed in every respect in conformity with the requisites of the statutes, but that, on the contrary, the names of fifty-nine persons duly qualified to serve on the jury for the county of the city of Dublin, were omitted from the general list, and from the special jurors' book of the said county, but the challenge contains no accusation against the sheriff, or any of his subordinate officers. The challenge by each of the defendants alleges in deed, "that a list, purporting to be a general list, was illegally and fraudulently made out, by some person or persons unknown;" and the challenge by Mr. Steele states further, "that the names were left out for the purpose and with the intent of prejudicing the said Thomas Steele in this cause, by some person or persons unknown;" but neither in the one case nor in the other is the most distant suggestion that the sheriff is in fault. The sheriff therefore being neither unindifferent nor in default, the principle upon which the challenge to the array is given by law, does not apply to the present case. The statute has, in fact, taken from the sheriff that duty of selecting jurymen which the ancient law imposed upon him, and has substituted instead a new machinery in the hands of certain officers, by whom the list is to be prepared for the sheriff's use."

I beg here in this connection to call your honor's attention to one particular feature of this opinion of the learned judge, reasoning upon the doctrine that the only cause of challenge is unindifferency or default on the part of the sheriff. My learned brother on the other side will see that the sheriff has nothing to do with the selection of the jurymen. The statute having taken from the sheriff that duty anciently imposed upon him, and placed it in the hands of other officers by whom the list is to be prepared for the sheriff's use; and yet, although it appeared that the list prepared by these officers was substituted for another improperly and fraudulently; still the challenge was not allowed, because the only ground of challenge must be unindifferency or default on the part of the sheriff. Here we have a similar substitute of machinery, the statute having taken from the marshal the selection of the jury and placed it in the custody of other officers in a manner very much analogous to the law of England. There the assessors were to furnish the list to the clerks of the peace, the clerks of the peace to the recorder, the recorder to make out a clear list the jury book, and a copy of that list to be placed in the hands of the sheriff. Here the clerk of Georgetown, of the levy court, and the register of Washington are to prepare certain names and put them in a box, which box is to be

placed in charge of the clerk of the supreme court to be sealed up. From that box the jurors are to be drawn, and return is to be certified by the clerk of the criminal court. The sheriff has nothing to do with all this. There the challenge is made because the jury book was not prepared in conformity to law; here because the jury box was not prepared as alleged in strict conformity to the law. The two stand precisely alike so far as the preparation of the jury book there and the jury box here is concerned. The chief justice goes on:

"If the sheriff, when the jurors' book was furnished to him, had acted improperly in selecting the names of the jury from the book, such misconduct would have been a good cause of challenge to the array; but that which is really complained of is, that the material of the book out of which the jury is selected by the sheriff, and for which the sheriff is not responsible, has been improperly composed. It is not, therefore, a ground of challenge to the array; and further, it is manifest that no object or advantage could have been gained if the challenge had been allowed, for if the challenge had been allowed, the jury process would have been directed to some other officer, who would have been obliged to choose his jury out of the very same special jurors' book as that which the sheriff had acted on, for no other was in existence. The same objection might again be made to the jury panel secondly returned, and so *toties quoties*, so that the granting of this challenge would, in effect, amount to the preventing the case from being brought to trial at all. The very same difficulty might occur in England, if, through accident, carelessness, or design, a single jury list, directed to be returned by the overseers of any parish within the county, were not handed over to the clerk of the peace, or if a single name should have been omitted in any list actually delivered to the clerk of the peace. The jury book must necessarily in either case be deficiently made up. But if deficiency were allowed to be a ground of challenge to the array, the business of every assize in the kingdom might effectually be stopped. That there must be some mode of relief for an injury occasioned by such non-observance of the directions of an act of Parliament, is undeniable; but the only question before us is, whether it is the ground of challenge to the array? and we all agree in thinking it is not, and therefore we answer this question in the negative."

I will not detain the court by reading from the opinion of the learned lord chancellor, for he pursues the same course of reasoning as that pursued by Chief Justice Tindal, and coincides in the opinion I have read. He says:

"If the sheriff is unindifferent, to use the legal expression, if he is not equal between the parties, that is a ground of challenge to the array. If he is guilty of any default in returning the jury, that also is a ground for this species of challenge. Those are the only grounds of challenge to the array. They are of a personal nature, and are confined to the sheriff or other officer, whoever he may be, by whom the jury is returned."

I do not mean to say there is anything peculiar in the character of the sheriff that makes him specially liable in the particular mentioned in this opinion, but it is the officer who makes return that must be guilty of unindifferency or default; but the opinion goes to the extent that a challenge of the array is only proper where there is a default of the officer who makes the return of the particular jury, and not of the officer who selects the particular jury. There ought to be, and there is a remedy where the jury book or the jury box has not been properly prepared, but it is not a remedy by challenging the array. That remedy applies only where the officer making the return of the particular petit jury has been guilty in selecting that particular jury.

I respectfully submit, therefore, that if this case in England is law, there is no difficult question before this court. And if it is not, there is no difficult question, because, as I have said, those men were present in the discharge of their duty.

And I further state, that if cognizant of the fact that there is a defect in this

jury (if there be a defect) and we go to trial, we thereby waive any advantage that we might otherwise be entitled to in consequence of that defect. The learned counsel on the other side, yesterday seemed to suppose it was not competent for us to waive that advantage. I find the rule to be that wherever a jury or juror is liable to challenge and a verdict is found, even in a capital case, the party cannot take advantage of any defect in the jury unless he was ignorant of the defect before he went to trial, and unless it so appears upon record. It is necessary that he should make affidavit to the fact that a knowledge of the incapacity of the juror came to him after the trial. If he had that knowledge before the trial, he will not be permitted to allege it in support of a motion for a new trial.

I may be allowed to suggest also to your honor, that this motion is not founded upon any alleged incapacity of the jurors themselves; it is simply upon the warrant on which they were selected. It is possible—it is unquestionably true, that if it were founded upon any incapacity of the individual jurors—if it were founded upon the absence of any of the legal qualifications prescribed for jurors, the motion might be entertained by the court. But it is not because of any legal disqualification of any of the jurors composing the panel, but simply because they have not been brought here in the way the gentlemen think they ought to have been brought.

I hope the United States is looking for the attainment of justice in this case; I trust nothing may be developed in this case looking towards anything else. I trust the government will tread the high and honorable path which leads to the attainment of simple, and I may add, speedy justice. And entertaining this hope, I suggest to your honor, whether it is probable a jury against whose qualification nothing is alleged, who were summoned without regard to this case, and before it was anticipated it might be tried, are not better fitted to do justice than another summoned in anticipation of the case—a case not of an ordinary private nature, but one of great public interest, in which, while the United States as a government, I trust will tread in the highways I have spoken of, there are individuals occupying offices in that government who may be disposed to tread lower paths, through which we will have to follow.

May it please your honor, I shall say no more upon this motion than to add that after the most careful examination I have been able to give to it, the honest conclusion to which I have come is, that the ground, probably, upon which the motion rests, is to be found in the act of 1853, page 160, 10 Statutes at Large, which act provides that where a criminal case is on trial in this court, and a jury has been impanelled, and another term begins during the progress of the trial, the cause shall continue; but leaves it exceedingly questionable whether, unless the jury is fully impanelled before the end of the term, the cause can be tried. That other term begins on Monday next, and unless a jury in this case is impanelled before Saturday night it is questionable whether this case will be tried for many days or many years.

Mr. PIERREPONT. May it please your honor; when learned and eminent counsel arise in a solemn manner to address the court, I always suppose them to be sincere. I have no doubt that the learned and eminent gentleman who has just taken his seat is not only sincere, but earnest in the extreme, in his desire to prevent the success of this motion. The logic of that sincerity will be apparent when I quote the beginning of his speech. He says: "If this motion prevail, then the grand jury which found this indictment was illegal, and it puts my client at large."

Now, I suppose, my learned friend came here to put his client at large.

Mr. MERRICK. By the verdict of a jury.

Mr. PIERREPONT. If not, why is he here? I conceive that he is not here for any other purose than to put his client at large. If the motion that we have made, he says, prevail, his client is at large; and yet he talks an earnest hour to your honor in order to have you deny this motion, and thus prevent his client being at large.

Let us see what all this means. It is a very extraordinary spectacle, truly, to have a lawyer, earnest in the defence of his client, rising and telling your honor, that if the very thing we ask is done his client is free; and yet exerting himself with an earnestness and an ingenuity which is commendable, to prevent his client from gaining his liberty. It is something new in the administration of justice. I fancy, your honor, that I have a right to infer either that he is not sincere in believing that the success of this motion would set his client at large, or else he will have to meet this extraordinary result, that he does not wish to have his client at large.

Mr. MERRICK. Will the learned counsel allow me a moment? I merely wish to say in reply to the first suggestion, which he is now eliminating, that I desire my client to be set at large by the verdict of a jury. My judgment is that if this motion prevail, this indictment falls; but the blood-hounds of the law may still track him for another indictment. I desire him to go forth from this court-room free from accusation and protected for the future.

Mr. PIERREPONT. Well, then, your honor, the reason is that he wants him tried by a jury, and that is exactly what we want. I called your honor's attention yesterday to the section of the statute now before me, that whenever there is a failure from any cause with regard to a jury, the marshal shall summon good and lawful men under this law to exercise that high function; and we yesterday proposed, in order that no delay might be had, that the marshal should proceed to summon a jury, and if they choose to say so, we will without another word say, let the marshal proceed, under your honor's direction, to subpœna a jury and bring them into this court to try this case. They will discover before we progress much further, that the United States are as zealous, as earnest, and as eager, to try this cause as the other side; and they will discover before it is through that the public mind will be set right with regard to a great many subjects about which there have been such active, numerous, and unfounded reports. Since I have been here in this city for these past few days, has it been circulated in nearly all the journals of this country, that the United States dared not bring forward the diary found upon the murderer of the President, because that diary would prove things they did not want to have known. All these things will be proved to be false, and all the papers, about the suppression of which so much has been said, will be exhibited here on the trial of this case. We are anxious that it should be proceeded with at once. It has likewise been circulated through all the public journals, that after the former convictions, when an effort was made to go to the President for pardon, men active here at the seat of government prevented any attempt being made, or the President being even reached for the purpose of seeing whether he would not exercise clemency; whereas, the truth, and the truth of record which will be presented in this court, is that all this matter was brought before the President and presented to a full Cabinet meeting where it was thoroughly discussed; and after such discussion, condemnation and execution received not only the sanction of the President but that of every member of his Cabinet. This and a thousand other of these false stories will be all set at rest forever in the progress of this trial; and the gentlemen may feel assured that not only are we ready but that we are desirous of proceeding at once with the case.

If your honor please, it is inconceivable to the human mind that mortal man can be placed in a more solemn position than in coming before a court and a jury where a fellow man is to be tried for his life for the murder of another. More than ordinarily solemn is this great occasion. On the 14th of April, 1865, a crime was committed that shocked the whole civilized world; a crime against human life; a crime against the laws; and a crime against our beloved government. Men have suffered death for that crime, and one, who is now the prisoner at the bar, by the grand jury of your District, has been found to have been engaged in that great crime. He is here to be tried. We hope he will be tried

and in a way that is decent and becoming, with all the solemnities and with all the forms of law; that he will be tried justly and fairly; and we desire that the jury who shall sit to try him shall be a jury brought here accor ling to all the forms of law, so that when they shall render their verdict, whether that verdict be acquittal or condemnation, this whole country and the entire civilized world, who will read that verdict will know and feel that the man has been tried fairly, that he has been tried justly, that he has been tried by a judge of high moral character and great legal learning, that he has been defended by able counsel, and that the verdict, for him or against him, has been pronounced by honest jurors who are brought here in all respects according to the law.

This motion is made for the purpose that when this trial shall take place, it shall be in such a way that all men everywhere shall see it has been such a trial as the occasion requires, that it shall not be a mockery and a sham, and that the prisoner shall not be tried by jurors who are not legal triers, but by jurors that are brought here under the laws of the United States, fit and proper men to try this case as the law directs.

My learned friend while making the assertion to your honor that the prevalence of our motion would set his client at large, at the same time urges your honor to deny this motion, and says that we cannot look into the acts of this jury, nor into the statutes which direct how a jury shall be empanelled or how they shall be selected, and cites a case from England, which I shall presently call to your attention, in relation to the sheriff of England. Permit me to say that in looking at your laws, I discover that the sheriff has no more to do with this jury than the clerk of the Senate of the United States. Neither the sheriff, nor the marshal occupying the place of sheriff, has any responsible duty in relation to the empanelling of this jury. Now I call your attention to the law, and I submit to your honor that when a man is to be tried for his life, if the verdict is to be of any validity, he must be tried according to the law. In this country and in England from which we derive our notions of liberty, ever has the law been jealous of human life, and so jealous that I believe it to be a well-settled principle of law that no stipulation of counsel and no stipulation of the prisoner ever could allow him to be tried by twelve men and convicted and executed upon such a verdict. The law of public policy is that the man who is to be tried for his life shall be tried in all respects according to law; that the judge who tries him shall sit according to the law; and that the witnesses shall be sworn and testify according to the rules of law; and the jurors who are to bring in their judgment upon such a man are to be selected in the way that the law directs; and if selected otherwise the verdict is good for nothing. Let us see what the statute says about it—the statute under which these jurors have any power whatever to try this prisoner. Save for this statute these jurors have no more right to sit in judgment than jurors from the city of New York or from the city of London. What does the statute say? Let me read it:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall be the duty of the register of Washington city and of the respective clerks of the city of Georgetown and the levy court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District."

Now what is required by this law in the very first section? That the jurors shall be white male citizens, tax-payers, of this District, otherwise they cannot be jurors. Now let me ask my learned friend if he had come into this court and discovered that every juryman sitting in these seats was a negro, and he had made the motion we have now made, and I had risen and said to him, "You cannot set aside this panel because you have heard the evi-

dence here of these men who selected it, and you cannot go behind what they say about it." What would my learned friend say to the argument? Suppose I took his own ingenious and excellent argument and turned it against himself, what would he say to it? Would he think it a good argument if every man who sat there was a negro? Would he not turn me to this statute and say "of the white male citizens," and then turn to your honor and say, "Are these white male citizens, every man of whom is a woolly-headed African? [Laughter.] He cannot meet that suggestion; and the case is precisely parallel to the one at bar.

Mr. MERRICK. If my learned friend will allow me to ask him a question——

Mr. PIERREPONT. Any.

Mr. MERRICK. Does the learned gentleman include in his motion challenging this array any objection to the personal qualification of these jurors?

Mr. PIERREPONT. I most assuredly do.

Mr. MERRICK. I was not aware of it.

Mr. PIERREPONT. They are just as much disqualified as though they were negroes. The statute says they shall be "white;" and the statute says they shall be "tax-payers;" and the statute says they shall reside within this District. We find they are not a jury of tax-payers, and they are not a jury of negroes; but they might just as well have been tax-payers and negroes, for on inquiry of my learned friend, the district attorney, I am informed that you have in your District negroes who are tax-payers. If these, then, had been tax-paying negroes, they would have been just as well qualified as white non-tax-payers, and there is no getting rid of it.

Let us see what further the statute says on this subject. I am only in the beginning of it. Those are the men that the law says are to be selected as jurors. I repeat, let us see what further it says. And they may put in "the names of such qualified persons as were on the list the previous year, but who did not serve as jurors; and the lists thus made of the register and clerks aforesaid shall be kept by them respectively and be delivered to their successors in office." These three men shall make their lists of tax-payers who are white in these three districts. What shall they do when they get together? The officers aforesaid shall select from the list of the register of Washington city the names of four hundred persons. That is what these three men are to do. This board, as my learned adversary calls it, and very justly, are to select first from the list of the register of the city of Washington four hundred names. Let us start there. Did they select from the register's list of the city of Washington four hundred names? He tells you that they never selected one name, and that he never had there a list, first or last. When I asked him on the cross-examination here yesterday, after they had brought him here, "Did the others even see the rolls of the names that you put into the box?" He said "No." "Did you see any that they put in?" He said "No." And you will find it so appears on the record.

What was the object of this law? The register of the city of Washington was to bring the list of tax-payers whom he deemed qualified. The clerk of the levy court was to bring his list of tax-payers whom he judged to be qualified. The clerk of Georgetown was to bring his list of tax-payers whom he thought to be qualified. And this board, thus together, was to select first from the register's list of the city of Washington the names of four hundred persons, from that of the clerk of Georgetown eighty, and from that of the clerk of the levy court forty. Did these three men select from the list of the register of Washington four hundred? They never selected a man, and that evidence is perfect and complete. Did the three select from the list of the clerk of Georgetown eighty persons? Not a man. Did this board select from the list of the clerk of the levy court forty? Not one. Now, there was some reason for this law, was there not? The object of it was to have a fair jury. This statute was passed by the Congress of the United States for the govern-

ment of this District, in which it was known when the statute was passed that there were persons of a variety of views in relation to the great public questions. It was known that in this city there were a great many men who did not sympathize with the government. There were others who were its bitter enemies. There were others who were zealously in its favor. There were the strongest abolitionists on the one hand, and on the other those who believed in and favored slavery. Every grade and class of political opinion and of moral view and religious notion existed in this city when this statute was passed, as it does to-day, and Congress was anxious that jurors should be so selected that when men came to be tried in this District they should feel that they were to have a jury without prejudice, and a jury in the selection of which more than one man had been engaged. That they could have a jury, after the list had been prepared, of the kind of men that the statute required, the strict provisions of which I have just read. Now, I appeal to your honor if, under the evidence before the court on the demurrer which admits it, one single requisite has been complied with. I ask your honor, suppose that these men had selected any sort of men they had pleased, men who were not residents, and, as I before said, men who were negroes, would that have been a good jury? Suppose the clerk of the Senate and the chairman of the Judiciary Committee had met together to select jurors and put their names in the box, and then afterwards the clerk had drawn them out, would that have been a good selection of the jury? It would have been just as good as this. It would have been just as strict a compliance with the law as this is. Why have any law about it? Why not say, "Let the register and these men go and do as they please about it." The law was made surely for something.

Let us see what further provisions they made to guard against any fraud or any partiality in relation to the selection of a jury. "The names selected from said lists shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names cannot be seen, and placed in a box." Were the names written on these pieces of paper taken from those lists? Not a name selected by this board was taken from these lists; but these three different persons selected, and neither ever let the other know, as the evidence shows, what he had selected. Not a man knew any except such as were his own; and the register of this city did not even know his own, for his own clerk, as he says himself, rolled up the names and put them in. "And they shall be placed in the box to be provided by the register and the clerks aforesaid, which box shall be sealed, and after being thoroughly shaken shall be delivered to the clerk of the circuit court of Washington county for safe keeping." Let us see whether that part of the law, under this evidence, was complied with. The box was not sealed, as the evidence shows. It was not sealed or delivered to the clerk. That is a very important provision. If the box was delivered to the clerk unsealed, why, your honor knows, there might be a clerk dishonest—I do not wish to be understood as making any such suggestion here, on the contrary, very far from it—but there might be a clerk or a deputy clerk, or some one connected with the office, who might see fit to stuff that box with other names for other motives; and, therefore, to provide against this, it is enacted that this box, by these men who compose this board, shall be sealed and thoroughly shaken, and after it is thus sealed and thoroughly shaken it shall be delivered to the clerk of the circuit court. The evidence is that when this box was delivered to the clerk of the circuit court it was unsealed. Can it be said and urged to your honor that these men, intrusted with the performance of this high duty, can properly disregard every one of these requirements? I submit to your honor, and will prove by this evidence before I am through, that from the first step they took to the last they did so disregard them. Not one single act did they do that was not in violation of the statute.

Next, "that the said register and clerks and the clerk of the circuit court

shall, at least ten days before the commencement of each term of the circuit or of the criminal court, meet at the City Hall of Washington city, and then and there the clerk of the circuit court shall publicly break the seal of said box, and proceed to draw therefrom the names of so many persons as are required."

There is another requisition: That these men, that this board of three, should thus select the jurors and put their names in a box, seal it up and deliver it to the clerk, shaken and sealed; and a very important provision it is, as your honor will see. Suppose, for any bad motive—no such motive do I attribute in this case, but make the supposition simply as an illustration of the point of law that I wish to bring to the attention of the court—suppose, from any motive of partiality or interest, one of these gentlemen forming the board saw fit, in drawing from the box, to draw names which were in his hand instead of the names in the box. The law provides that he shall not have that opportunity; that he shall not draw them, but that the clerk of this court shall draw the names. Now, what is the evidence? It is that one of this board, the clerk of Georgetown, drew the names, and not the clerk of this court. The clerk of Georgetown had no more right to draw these names than my learned friend, the district attorney; and drawing them, he was doing that which made it an illegal draft of this jury, directly contrary to the law. Law is not supposed to be made in folly, or in nonsense. Congress makes this solemn provision that these names shall be drawn by the clerk, who is not one of the board, but a totally different man, after the box containing the names shall have been delivered to him, shaken and sealed; yet one of this board draws the jury. That is the evidence before us, and uncontradicted.

Let us see what further provisions are made in relation to this matter. It was evidently anticipated by the Congress which passed this law that a contingency might arise in which it might become necessary to set aside the array and order a new panel, and, in order to meet that contingency, they have made provision for it in the section which I will now read; and I will just say that my learned friend, in reading from this case in England, read what the learned judge there said in relation to *their* law; that their law did not allow them to go behind the sheriff in relation to the matter, and he gave as one good reason why the sheriff's selection should not be set aside, that there was no other earthly mode prepared in England by which they could proceed to the trial of any case. My learned friend read it from the report, some portions of which I shall have occasion, in a moment or two, to cite to your honor.

Mr. BRADLEY. Will you be kind enough to repeat the remark just made? I was otherwise engaged at the moment, and did not hear it.

Mr. PIERREPONT. I say that one of the reasons that the Lord Chief Justice Tindal gave as a good reason for setting aside the selection of jurors in England was, that if that motion were granted, there would be no mode by which they could get a jury to proceed with the trial of causes.

Mr. BRADLEY. Oh, yes; I now understand you.

Mr. PIERREPONT. Now, in our case no such reason can be assigned. The statute does contemplate just such an emergency, and has made a provision for it. It provides, in section five, that "if a jury be required for the circuit court, the twenty-six persons whose names shall first be drawn shall constitute the jury for that term; and the names of the persons drawn as aforesaid shall not be again placed in such box for a period of two years. If any person whose name is so drawn shall have died, or has removed from the District, or has become otherwise disabled from serving as a juror, the said register and clerks shall draw from the box the name of another person who shall serve instead; and after the requisite number of jurors shall have been so drawn, the said box shall be again sealed and delivered to the clerk of the circuit court, as aforesaid."

Immediately following that provision is section 7th, which says that "in case either of the officers whose duty it is to make out the lists aforesaid shall ne-

glect or refuse to act, or in case either of them shall be interested in any action or proceeding pending in the said circuit or criminal court, the chief judge of the circuit court shall appoint a fit and proper person to discharge the jury instead; and if the persons selected as jurors do not attend, the court may order the marshal to summon other respectable tax-payers, *possessing the other legal qualifications, to supply the deficiency;* but if at any time there should not be, by reason of challenge or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose."

Now, if the persons selected as jurors do not attend, the court may order the marshal to summon other respectable—what? "Other respectable tax-payers, possessing the other legal qualifications, to supply the deficiency." In the first section it states what the legal qualifications are—"to be tax-payers, and to possess the other qualifications." The seventh section provides that, in case of failure from any cause, the court shall direct the marshal to summon as talesmen other respectable tax-payers, possessing the other legal requisites; and the marshal, under the direction of the court, shall thus prepare the list of other respectable tax-payers, &c. Congress seemed, therefore, determined that in no event should justice fail, and that no such reason could be given by your honor as was given by Chief Justice Tindal, that there could be no other mode of proceeding.

The thing is complete; there is no difficulty whatever in the matter. Congress has provided, first, that it shall be done in a particular way; that a particular kind of persons, and those only, shall be the jurors, and that they shall be selected in a certain manner and drawn in a certain manner; and then, to avoid the possibility of a failure of justice, they say that, if from challenging or from *any other cause*, a sufficient number may not be had, the court shall order the marshal to make the selections from the proper persons having the legal qualifications, so that all these questions will lie quite outside of this case, and power in the court is complete. There is no cause or reason for delay; it may be done now and forthwith, and the sooner it is done the better. I take it for granted that my learned friends want it to be done soon. They want to go on with the case. We are as anxious as they to go on with it.

There is one argument which was made by the gentleman in the early part of his remarks to which I desire to call to the attention of the court, and that is this, that if this jury is an illegal jury, why, then, other men have been convicted here illegally. He urged it with much earnestness, that that was a reason, if you had been going on in an illegal way, why you should continue to do so. I think that, on reflection, my learned friend will not consider that argument sound. If you have been doing illegal or immoral or any other wrong acts, the time to stop is when you first make the discovery, and not to say, "We will continue it, because we have always done it." Your honor knows when we made some attempt to civilize the Indians, and an Indian chief was reproved for murdering his enemies, and was told that it was unchristian and wrong, he said he had always killed his enemies, and insisted that, therefore, he should still kill them. An immoral woman of the Sandwich islands, too, whom our missionaries attempted to convert to virtue after marriage, urged as a reason for continuing her mode of life, that she had always been so doing as she was then.

My learned friend read from page 247, of Clark & Finnelly's Reports. Let us see what that case was. The question came up for this judge to answer; and the answer he gave to the sixth question was—in England they have a statute upon the subject it seems——

Mr BRADLEY. I beg your pardon.

Mr. PIERREPONT. They have a statute in England to which he alludes. I am coming to that in a moment.

Mr. MERRICK. I thought you stated that there was a statute in regard to the grounds upon which a challenge would be allowed.

Mr. PIERREPONT. Oh, no, sir; the statute upon which this was based. The answer of the learned judge was: "the only ground upon which the array is allowed by the English law is the *unindifferency or default of the sheriff*. But no want of indifference in the sheriff, nor any default in him or his officers, was assigned for the cause of the challenge upon this occasion."

That was the end of the case. It ought to have been the end of the case. This word "unindifferency," which I see the learned judge uses here, is certainly a new word to me—I never saw it before. I suppose, however, it is a good one.

Mr. MERRICK It is habitually used in that connection throughout the law.

Mr. PIERREPONT. I say I suppose it is a good word; but it is not one that I am accustomed to. Of course, we understand what it means. Now, the only ground to the challenge of the array that is allowed by the English law is the "unindifferency or default of the sheriff." That being so, it does not need much comment. The only ground upon which the law allowed a challenge was not pretended to exist, as the learned judge said. Therefore there was no necessity for spending a great deal of time upon a case like that. Of course, that would end the case. It did not need so much learning or argument as the learned judge and the lord chancellor seem to have given to it; but from the notoriety of the case, and from the magnitude of the subject involved, which was then made a political affair, they saw fit to give it a great deal of consideration, and gave as reasons why they should not undertake to set aside this panel the fact that they had no possible way of having justice administered, no other mode of getting a jury. It was not pretended in the challenge, as the judge said, that the legal ground and the only legal ground upon which there could be any complaint predicated existed. Therefore, of course, the motion was denied. And in this case, if there is no ground for it, of course the motion will be denied. If there is ground for it, I take it the motion will be granted. In this case, we act under the laws of the United States directly—under a statute. It is a principle of the common law, well known and understood by all lawyers and all men, perhaps, that it lies in the discretion of the judge to construe the law; it is not only in his discretion but his duty to see that the law over which he is called to preside is properly administered. Your honor is placed in your high position in this court for the purpose of giving construction to this statute; for the purpose of seeing that the laws of Congress relating to this District and this court over which you preside are executed. This is not an unmeaning statute. The reasons of it are apparent upon its face, and when Congress passed it it was understood that this statute was to be obeyed, and that when a man was to be tried for his life, or when he was to be tried for any felony, or any lesser crime or misdemeanor, or for anything else, the jurors who were to try him were to be selected *by law*, and that no irregularity, informality, or defect in that selection should be passed lightly over by the judge who presides. But it is his duty to see that the law is administered, if it be called to his notice; and if the statute has never before been called to your notice, of course your honor has not passed upon it. As I learn from my associate, the district attorney, and as I infer from what the learned counsel on the other side have said, this question has never here arisen before. Of course, therefore, it is no man's fault; it has not been thought of. These men proceeded in their own way. They thought they would take *their* way to get a jury, instead of the way of the law. They chose to tread in their own path; to be a law unto themselves; to say, "We will fix up a jury as we please," reckless of the law. It is your honor's duty to see that a jury is selected in the way that the law directs, and that is all we ask. We are ready now to proceed to trial; we are desirous that the trial shall be

proceeded with, and we ask and urge that this other provision of the statute by which your honor is empowered to direct the marshal to summon a jury for the purpose of trying the cause shall be enforced, and that a jury shall be empanelled, in order that we may be permitted to proceed to trial at the earliest day that such jury can be selected. And we see no reason why it may not be to-morrow as well as any distant day, so that any so-called reason of delay is not a reason; so that any alleged reason of the failure of justice is a false reason. The statute has provided for all these things, and it lies in your honor to enforce it; and when the facts have been presented before the court; when it is shown that the statute is not complied with, and when it appears that the law has provided that a jury may be selected by your honor's direction in case of previous failure, I, for one, cannot for a moment imagine that your honor will not direct that the law be complied with, or that you will allow subordinates to exercise their own whims or notions, to set aside the solemn statute of the law.

This is a case such as your honor has never tried, such as your honor never will again try; such as has never been before tried in this country, and such, we hope, as never will be tried again. It is the first civil trial for the murder of a President of the United States; the first civil trial for the great crime of an attempt to destroy the government of the United States; one of that class of crimes which shock the whole world. Many people who despaired of the republic have doubts whether you can, before a civil tribunal, obtain a just and honest trial, a fair and impartial verdict in a great case like this. Therefore this case possesses a weight and magnitude such as surely no other case in this country ever had. It is in fact not simply the trial of a man for his life; it is in a measure a trial whether we can get a jury legally empanelled to try assassins and murderers of the President of the United States, who attempted to throw our country into confusion and anarchy, and who designed all the horrors to follow their act which the human mind can conceive. It is to be seen whether such trial can be fair, whether justice can be done. All of us who have read anything of history or who have reflected upon human nature, know that civil society will protect itself. They know, if the civil courts and the verdicts of juries cannot administer justice, that society, as in France and in other countries where the necessity has arisen, will be driven to take refuge in the gloomy despotism of military power. God deliver us from that! we want to show before our countrymen and before the world, that an honest jury of this District will give an honest verdict; that we can have a fair trial before an impartial court; and we believe that when the jury thus selected are brought together to try the cause, they will give a verdict with which our countrymen will be satisfied—and that is all we want.

Mr. BRADLEY. If your honor please, I know no case in which it has been my fortune to be engaged heretofore in which I rose to discuss a question of law with deeper interest than I feel now. The temptation is very great to be led away from the true question submitted to your honor for your decision, and it is exceedingly difficult to resist following the course which has been pursued upon the other side by discussing, not questions of law, but by presenting considerations to the court which should have no influence upon any judicial mind.

We are told that a jury is to be empanelled to try the assassin of the President. It would have been better to have said him who has been charged with being concerned in that monstrous crime.

Mr. PIERREPONT. Excuse me; I think my learned friend could not have heard all the language I used. I said, as found by the grand jury.

Mr. BRADLEY. That observation escaped my attention. There are, if the court please, other inducements which are hard to resist, that lead me to make some commentaries upon the course pursued by gentlemen on the other side; but time is too precious, for I desire to have this discussion closed in time to receive the decision of your honor to-day, that if this motion is overruled and the demurrer

sustained we may at once proceed to impanel a jury, and if it is not and there is any other movement of delay on the part of the prosecution, that we may be prepared to meet every dilatory process as soon as it arises. We are in earnest, we desire to have this party tried now, we desire to have him tried by a jury *omni exceptione majores*, against whom not a breath has been uttered by any counsel who has addressed the court since the commencement of these proceedings, by a jury empanelled according to the form of law which has prevailed since the passage of the act under which it is empanelled—a jury above challenge for qualification—a jury conceded to have been selected by honest men with honest purposes, without reference to this trial—a jury standing, if a jury can stand, impartial in view of such an event as has been referred to—a jury standing impartial between the government and the accused. We desire that the intention of the act of Congress shall be carried out, which was to take from the marshal of this District the power to select jurors; we desire, if possible, to avoid the selection which may be made of talesmen, for we know too well the condition of society here; we desire to have such a jury as has been impanelled under the circumstances in which this jury has been summoned, admitted to be free from all exception.

But again I take issue with my learned friend on the other side. We desire to have a jury that can try the case now; for if we do not try it now, no jury under that statute can be summoned or returned until next February. The condition in which the marshal is to be called in to summon talesmen cannot arise, because there has been no panel returned, and therefore no panel can be exhausted, and until a panel has been returned and has been exhausted by some process of law, the authority of the marshal to summon talesmen is out of the question. The predicate is that a panel shall have been exhausted. If there is no panel, there is no predicate, and if that is no predicate, the marshal cannot summon. We are sincere, if your honor please, in endeavoring to bring this question to an issue now. Our brethren claim and we accord to them the same sincerity. We may have done them injustice in supposing this was interposed for delay; we may have done them injustice in supposing that at this late stage of the term and after so many years of experience this process of selecting a jury was first discovered to be wrong. I hope we did. But there is a graver view of this question which has not been touched by the counsel on the other side, nor by my learned brother who preceded me. We have been told that it is an obligation of common law that the courts shall enforce statutory provisions; but there is a higher and a holier duty, that courts shall not make law. The counsel on the other side seek by this motion to prevail upon your honor to make a law. We have no statute upon the subject of challenging the array. We stand upon the common law of England, the common law of the State of Maryland, the common law engrafted upon the laws of the District of Columbia, the common law which must stand unless repealed or modified by the statute, common law which is as binding upon the judgment and conscience of this court as though it were statute law. Now, sir, what is that common law? Can any man, lawyer or not, doubt what that common law is when he reads or has heard read the case of O'Connell and the Queen? Can any man doubt that by the common law of England, the only challenge to the array was for default in the man charged with the summoning of the jury? The preparation of the list of jurors was not cause of challenge. If any case can bring this case directly to judicial decision, that case of O'Connell does. There was fraud and illegality charged directly upon the party making out the jury book, which was admitted on the record as being fraudulent and illegal, and the courts say in such a case as that there is no such remedy as a challenge of the array. They say admit that it sounds harsh and tyrannical: what of that? It is the law of the land, and they go back to the year books of Edward II and Edward III where it was laid down by Lord Cook that the challenge to the

array cannot be allowed, except for partiality in the person summoning the jury. Whether there are other remedies or not is not for me to say. Whether there are other remedies which in this instance the United States might have pursued is not for me to say. I say it is laid down by that highest and greatest court of the present time, a court composed of the fifteen judges of England, that by the common law a challenge to the array can only go to the disqualification of the officer making the summons and return. No human ingenuity can escape the conclusion of that case. Argument is vain. It is like buffeting the light waves against a great rock, it falls back in spray. There is the solid basis, the decision of the fifteen judges of England, the most solid basis upon which we can rest the principles of our liberty, the common law of England. It comes to us under that rule thus strict, thus limited, thus defined, hoary with age, baptized in our own revolution, the common law of England.

Now, for the purposes of this case your honor is asked to make a new common law. I appeal to your honor to vindicate the common law of England, and to enforce it.

Now, sir, I pass from that to another consideration. When this question was proposed yesterday I conceded that the defendant in this case, according to the current of decisions, could not waive a defect in the empanelling of the jury. I stated, however, that I had seen two well-reasoned decisions the other way. I have since then seen four, and, unless the defect appear upon the record of the case, or unless it shall clearly appear that the party did not know of the disqualification or defect, he is as completely concluded as though it were a civil case, and he had, in form, waived that right the waiver is conclusive, and I refer my learned brothers upon this point to a case in seventh Wendell—with which one of them at least, Mr. Pierrepont, is perfectly familiar—in which a man in a capital case moved for a new trial on the ground of irregularity in empanelling the jury. The case is found on page 421. I read from the opinion of the court:

"The revised statutes provide that a jury for the trial of an indictment shall be drawn in the same manner as is prescribed by law for the trial of issues of fact in civil cases, (2 Rev. Stats., 734, 735;) and in civil cases where there is not a jury empanelled in another cause the statute directs that the ballots containing all the names of the jurors returned and appearing at such court, shall be placed together in the same box before any jury shall be drawn therefrom, (2 Rev. Stats., 421, §64.) Here, the ballot containing the name of Smith not having been placed in the box before the drawing of the jury commenced, it is said the statute was violated, and the prisoner is entitled to a new trial."

The language is so distinct that no one can fail to understand it, yet the requirement was departed from in this case, and this a capital case. I read further from the opinion:

"We have several times had occasion to consider the effect of an ommission on the part of the officer whose duty it is to draw and empanel jurors to conform to the precise regulations prescribed by law in that respect, and we have uniformly held that this statute, like many others of a similar character, is to be considered as directory to the officers merely, and that a neglect to conform to its provisions will not *per se* be a sufficient ground for setting aside the verdict of such jury where the court sees that the party cannot have been prejudiced by it, (5 Cowan, 289. 7 Id., 232.")

Now, I would like to know how a party would be prejudiced by trying his case before this jury, but, if your honor please, I can see how he can be prejudiced by summoning talesmen to supply their places. I read further:

"The 59th section of the same act (2d Rev. Stats., 420,) provides that the clerk of the court shall cause the names of the several persons referred as jurors by the sheriff, with their respective additions and places of residence, to be written on several and distinct pieces of paper, each in the same manner, as near as may be, and so as to resemble each other as much as possible, and so that

the names written thereon shall not be visible. In Cole and Perry, (6 Cowan, 584,) a motion was made to set aside a verdict on the ground that the ballots containing the names of the jurors were not folded at all, but were put open into the box, in such manner that the names might easily have been seen by the person drawing them. On the other hand the affidavit of the clerk who drew the jury was produced, stating distinctly that he did not see the names of the jury until after they were drawn. The motion was denied on the ground that the statute was directory merely to the officer drawing the ballots, and that the mistake of the officer in the discharge of his duty, was not a ground for setting aside the proceedings where no injury to the party complaining was shown or pretended. The principle of this case is believed to be fully sanctioned by a great variety of decisions in our own and the English courts."

Again, on page 424, he uses this language:

"The conclusion from these cases appears to me to be this: that any mere informality or mistake of any officer in drawing a jury, or any irregularity or misconduct in the jurors themselves, will not be a sufficient ground for setting aside a verdict, either in a criminal or civil case, where the court are satisfied that the party complaining has not or could not have sustained any injury from it."

Again, on page 426:

"The case of King *vs.* Hunt, (4 Barn and Ald., 430,) bears a strong analogy to the case at bar. That was the case of an information for a libel, before a special jury. Ten of the special jury attended, and two talesmen were sworn, and the defendant was convicted. He moved for a new trial on the ground that the officer had omitted to summon the two special jurymen who had not attended, and it was contended that it was absolutely necessary that all should be summoned; that the act of parliament was imperative, for it required all to be summoned, and if two were omitted, so might any other number. But the court unanimously refused the motion, saying that it would be an alarming principle to establish that a verdict could be set aside because the sheriff had omitted to summon one juryman out of the whole panel; that applications of this sort were addressed to the discretion of the court; that if the officer had not done his duty he might be punished for it, and if his omission has actually produced prejudice to the party, then the court might, in its discretion, prevent injustice from being done by granting a new trial. In that case, the omission had not been shown to have been prejudicial to the defendant and therefore the motion was refused. This, I apprehend, is the true rule to be collected from all the cases"

He then reviews the case of The People *vs.* McKay, which was a capital case, and in which the defendant was convicted of murder.

"He was then brought into this court by *habeas corpus*, and the indictment and proceedings against him in the court of oyer and terminer, were also returned in obedience to a certiorari, directed for that purpose. Upon the papers thus before the court, the counsel for the prisoner moved an arrest of judgment on the ground that no venire had been issued to summon the petit jury, and it appeared that the venire issued was not under the seal of the court, and that no official return had been made to it by the sheriff. It was admitted by the counsel for the people that the case stood precisely as though no venire had been issued, it having no seal and was, therefore, absolutely void, but they contended that no venire was necessary. The only judgment then was whether the judgment could be sustained when the record showed that no venire had been issued."

Judge Spencer says: "Inasmuch, then, as the venire was necessary at the common law, and as the statute yet requires it to be issued, the omission to issue it we must consider an error apparent on the record, and in such a case, affecting life, we do not feel ourselves authorized to dispense with a process required by the

common law, and also by the statute, although we may not be able to perceive much use in continuing it." The decision proceeded on the ground that the error was apparent on the record, and the court could not disregard it.

I might refer your honor to other cases equally in point, but these are sufficient for my purposes. I therefore say, if the court please, that there is no error apparent on the record of the court in this case. There is no error showing any irregularity in making out these lists, in preparing the jury-box, in opening the jury-box, in drawing the jurors, there is no error of record, and if the case should go to trial advertised as the defendant has been by the proceedings now under consideration, he would be bound by that verdict as effectually as if every form of law had been complied with. There is no reason, then, of public justice; there is no reason of public sentiment, for that has been invoked; there is no reason affecting the public at large which could make a change in this case from the ordinary course of proceedings since the passage of the act of 1862 necessary or proper, but there is every inducement which can operate upon the mind or conscience of the judge to continue this trial now with this free, unembarrassed, impartial jury, and of not submitting the defendant to all the disadvantages which the act of Congress was intended to remove and subject the defendant to trial by a jury which is denounced by the act of Congress itself.

Now, if your honor please, a word only as to the construction of this statute.

Mr. PIERREPONT. I understood you to argue that in England there was no statute having any effect upon the empanelling of the jury.

Mr. BRADLEY. I did not say that.

Mr. PIERREPONT. I so understood you.

Mr. BRADLEY. What I stated was, that there is no statute in England touching the question of a challenge to an array.

Mr. PIERREPONT. I so understood you. That is the very point to which I wish to call your attention. I do so because I supposed you would desire to answer it. If you will turn to Chitty's Criminal Law, page 537, you will find challenges are of two kinds:

"Challenges for cause are of two kinds: 1st. To the whole array. 2d. To individual jurymen. To challenge the array is to except at once to all the jurors in the panel on account of some original defect in making the return to the venire."

Mr. BRADLEY. Now, if the court please, I am very much obliged to the gentleman for furnishing me with that. Now, if the gentleman will find me a statute authorizing it, I will be obliged.

Mr. PIERREPONT. If you will turn over a page or so you will find it.

Mr. BRADLEY. I will turn to that directly. That is the common law. If your honor will turn back to the time of second and third Edwards, to the "Year books," you will find that it was common law then. Now I proceed, sir:

"It is either a principal challenge or for favor, the former of which is founded on some manifest partiality, and is therefore decisive, while the grounds of the latter are less certain, and left to the determination of triers in the manner we shall state hereafter. The legitimate causes of a principal challenge are not very numerous. Thus, if the sheriff be actually prosecutor, or the party aggrieved, the array may be challenged, though no objection can be taken in arrest of judgment. So, if the sheriff be of actual affinity to either of the parties, and the relationship be existing at the time of the return—if he return any individual at the request of the prosecutor or the defendant, or any person he believes to be more favorable to one side than to the other—if an action of battery be depending between the sheriff and the defendant, or if the latter have an action of debt against the former—the array may be quashed on the presumption of partiality in the officer. So, also, if the sheriff, or his bailiff

who makes the return, is under the distress of the party indicted, or indicted, or has any pecuniary interest in the event, or his counsel, attorney, servant, or arbitrator, in the same cause, a principal challenge will be admitted. And, in general, the same reasons which we have already seen would cause it to be directed to the coroners or elisors, will also be sufficient to quash the array when partiality may reasonably be suspected. For all these causes of suspicion the king may challenge as well as the defendant."

Every one of these are cases personally affecting the sheriff—every one of them. Now, we go a step further:

"But besides these, the default of the sheriff will be sometimes a ground of principal challenge to the array. Thus, if the array be returned by the bailiff of a franchise, and the sheriff return it as from himself, the return will be bad, because the party will lose his challenge, though if the sheriff return one from the liberty, it will suffice, and the lord of the franchise will be compelled to resort to his action against him."

Was not that the default of the sheriff? Was it not charged against him that he had failed to discharge his duty, and summoned the commoners, when he was bound to summon the knights? It was the default of the sheriff—his personal misconduct—all of them looking to the default or misconduct of the returning officer.

The COURT. Mr. Bradley, does the default direct itself to the summoning power of the sheriff, or to the selecting power of that officer?

Mr. BRADLEY. To the summoning power. It refers to both, your honor, but it must be the act of the sheriff. There is a middle stage, sir, and there is where we are to go. The sheriff is the only party who is responsible at the common law, and the statute has failed to provide a remedy under the new act of Congress. In England, in the case of O'Connell and the Queen, the statute provided the mode of selecting and making up the jury book, and the whole duty of the sheriff was to select jurors out of that book. There was no charge of misconduct against the sheriff, and while all the anterior proceedings were declared to be illegal, yet the court says, "You charge nothing against the sheriff in making his return," and unless you do, this form of redress cannot avail you. The court say they may have a remedy, but the question is as to the form of the remedy. I need not say to this honorable court that the forms of the law are as much of the substance of the law as the law itself. The forms of the remedies to which men resort are just as binding upon them as the highest statutory obligations. Courts are bound by the forms which men adopt and determine according to the law respecting those forms. My attention is called to the passage from the opinion of the Chief Justice in that case:

"The sheriff, therefore, being neither unindifferent nor in default, the principle upon which the challenge to the array is given by law does not apply to the present case."

The statute has, in fact, taken from the sheriff that duty of selecting jurymen which the ancient law imposed upon him, and has substituted instead a new machinery, in the hands of certain officers, by whom the list is to be prepared for the sheriff's use.

If the sheriff, when the jurors' book was furnished to him, had acted improperly in selecting the names of the jury from the book, such misconduct would have been a good cause of challenge to the array.

"But that which is really complained of is, that the material of the book out of which the jury is selected by the sheriff, and for which the sheriff is not responsible, has been improperly composed. It is not, therefore, a ground of challenge to the array. And further, it is manifest that no object or advantage could have been gained if the challenge had been allowed; for if the challenge had been allowed the jury process would have been directed to some other

officer, who would have been obliged to choose his jury out of the very same special jurors' book as that which the sheriff had acted on, for no other was in existence. The same objection might again be made to the jury panel secondly returned, and so *toties quoties;* so that the granting of this challenge would, in effect, amount to the preventing the case from being brought to trial at all. The very same difficulty might occur in England, if, through accident, carelessness, or design, a single jury list, directed to be returned by the overseers of any parish within the county, were not handed over to the clerk of the peace, or if a single name should have been omitted in any list actually delivered to the clerk of the peace. The jury book must necessarily, in either case, be deficiently made up. But if such deficiency were allowed to be a ground of challenge to the array, the business of every assize in the kingdom might effectually be stopped. That there must be some mode of relief for an injury occasioned by such non-observance of the directions of an act of Parliament, is undeniable but the only question before us is, whether it is the ground of challenge to the array; and we all agree in thinking it is not, and therefore we answer this question in the negative."

That is what we complain of.

Mr. PIERREPONT. We make no complaint of the sheriff. His duty is simply ministerial.

Mr. BRADLEY. It is not, therefore, a ground of challenge to the array that they do complain of.

The fifteen judges in England say that is no ground of complaint. The learned gentlemen here say it is ground of complaint. They say it is true that they make no complaint of the sheriff or marshal, because he is only performing a ministerial duty, but they go back to the material out of which the list is made, and the court—the fifteen judges—say that it is not ground of complaint. I admit that my learned friend on the other side has argued this case with great ability, but I take the opinion of these fifteen judges in preference to his argument. These judges, I repeat, say that it is not ground of complaint, while my learned friend says it is ground of complaint.

Then, if your honor please, if I am right in my reading of these books—that where the cause of complaint does not exist upon the record, and a man is tried for his life, he cannot take advantage of that defect after his trial, except upon clear proof that he was ignorant of the defect at the time of the trial. If I am right in that, then I say they may proceed to trial at once. The defendant, as he has the right to do, waives the objection, notwithstanding the great value put upon the life of an "assassin."

Now, if the court please, I will proceed one step further, and I have already occupied much more time than I allowed myself. In illustrating this law, my learned brother says: "Suppose this board—we will call them a board, though they seem to be a very soft kind of board from what I can understand from the other side, that they did not discharge their duty any better—suppose this board had selected a panel of black men, and the panel had come in, all woolly-headed Africans—well, it would not be agreeable to me I admit—but is there no remedy? The remedy is not by challenging the array. That is all I have to say on that point.

Mr. PIERREPONT. It would not be the sheriff's fault?

Mr. BRADLEY. It would not be the sheriff's fault, and, therefore, it is not to challenge the array. But there would soon be found an entire remedy—very soon. Suppose they are not tax payers, and they challenge the array, and bring in their evidence to prove the fact that they are not tax-payers. There is no fault on the part of the marshal, and, therefore, they cannot challenge the array by any process known to the English and the American common law. They may have one, and another remedy, but it does not follow that they have

the remedy of the challenge of the array; and there is the mistake, the fatal mistake on the other side.

But suppose, if your honor please, that this motion prevail, what then? The learned gentleman, taking up this statute, reads as follows:

"SECTION 5 * * * But in a capital case, where the said panel shall have been exhausted by reason of challenge or otherwise, the court before whom such capital case is pending may, in its discretion, order additional names to be drawn; and if all the names in the box shall have been drawn out and no jury found, the court may order the marshal to summon talesmen until a jury shall be found."

And, again:

"SECTION 7. * * * And if at any time there should not be, by reason of challenge or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose."

Persons selected as jurors having the same qualifications——

Mr. PIERREPONT. Tax-payers, and having the other qualifications.

Mr. BRADLEY. Yes, sir; but that is not all. I will read the language of the statute:

"And if the persons selected as jurors do not attend, the court may order the marshal to summon other respectable tax-payers, possessing the other legal qualifications, to supply the deficiency."

After reading these sections, the gentleman turns back to the first, and says "tax-payers" is used there; "white male citizens" is also used there. He did not, however, read to your honor the eighth section, which prescribes the qualifications of jurors. What are they?

"That no person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, a good and lawful man who has never been convicted of a felony or misdemeanor involving moral turpitude."

Now, the previous sections require that he should be a tax-payer also, and I ask my learned friend to show me where it says he shall be a "white man." Have I not a right then to resist this motion? Is there not every inducement which a white man can have to resist it?

Mr. PIERREPONT. You will find the term "white male citizen" in the seventh line of the first section.

Mr. BRADLEY. Oh! I know, but that is when the jury is to be listed. When the register of the city of Washington, the clerks of Georgetown, and the county, are to make out their lists they are limited to white men.

The DISTRICT ATTORNEY. Does not that define the description of persons?

Mr. BRADLEY. Yes; but when the marshal goes to summon talesmen, how is it? The statute simply says "must be tax-payers, and possess the other legal qualifications."

Mr. PIERREPONT. The first section speaks of certain qualifications.

Mr. BRADLEY. No, sir; those are exactions, required when the lists are being made out, not qualifications.

I think I can see where this thing is drifting. It is not delay that is sought, but they have another motive more powerful than delay. It is to get another jury in the place of an honest jury already summoned. Why, sir, the gentleman talks about the misgivings in the public prints. I do not know that he has seen what I hold in my hand, an article from this place denouncing this jury because sixteen of them are Catholics, as they say, but there it is—such an article has been written and published in the New York Herald. I know, too, that the same article, published yesterday morning, foreshadows the fact that these gentlemen were to come into court on the day they did, and make the identical motion that they have submitted here.

Mr. MERRICK. And the writer states the ground of the motion.

Mr. BRADLEY. Yes, sir; states the ground of the motion. It looks to me as if it came from very near home.

Mr. PIERREPONT. What does it state as the ground of the motion?

Mr. BRADLEY. There it is, (handing a copy of the New York Herald to Mr. Pierrepont,) just the same ground precisely as was stated here, that it was not a lawful panel.

Mr. PIERREPONT. Oh! (laughingly.)

Mr. BRADLEY. But I do not mean to be led off in this way; and I beg the pardon of your honor for being led away from what is really a very important and grave question, to which we should confine ourselves. I repeat that I do not mean, if I can help it, to be led into the discussion of any outside matters, but will endeavor to confine myself to the pure proposition of law.

Now, sir, let us look at this statute. The act of 1862 says: "It shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown, and the levy court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February, in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of said District, in which lists may be included, in the discretion of the officer making the same, the names of such qualified persons as were on the list of the previous year, but did not serve as jurors, and the lists thus made out by the register and clerks aforesaid shall be kept by them, respectively, and be delivered over to their successors in office."

That is the duty of these parties. But when the polls are exhausted, when the jury box, or the panel is exhausted, drawn from the jury box, then the marshal shall go out and summon "other respectable tax-payers, possessing the other legal qualifications, to supply the deficiency." And then the very next clause is: "And if at any time there should not be, by reason of challenge, or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose." Then in the next section it is provided: "That no person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, a good and lawful man, who has never been convicted of a felony," and so on. Now, sir, I agree that these officers in selecting their jurors are to confine themselves to "white male citizens," but I say when that panel is exhausted, and the marshal goes out from this court to summon talesmen, he has to summon citizens of the United States, between twenty-one and sixty-five years of age, tax-payers, resident in the city of Washington.

Mr. PIERREPONT. He is confined to white men.

Mr. BRADLEY. No, sir.

Mr. PIERREPONT. That is what we hold. That is one of the first qualifications mentioned. He could not summon any other.

Mr. BRADLEY. No, sir. Nowhere in the statute will you find the term "white male citizen" repeated.

The COURT. Perhaps the counsel might reverse his position if the marshal should happen to summon such on the next panel. [Laughter.]

Mr. BRADLEY. Then, sir, I might argue the other way. The question is not settled yet, and I am only stating my present convictions. Argument by counsel on the other side might disturb those convictions a good deal, and cause me to go over to the other side. [Laughter.] If the court please, that is the "chance" if the motion be granted. And I would here ask the counsel, if the marshal should go out with the order of this court to summon talesmen, "citi-

zens of the United States, between twenty-one and sixty-five years of age, taxpayers, resident in the city of Washington," and should return here a panel of colored men, we could challenge the array.

Mr. PIERREPONT. We would.

Mr. BRADLEY. Gentlemen, I don't want to give you the chance; I don't want to put your virtue to so severe a test. [Laughter.]

One word, sir, as to the construction of this statute and I leave this question. Is it directory or is it not? In the cases referred to in 7th Wendell, we find that where certain proceedings are required, not essential to the substance, and they be not observed, non-compliance will not vitiate the list of the jury; they will not vitiate the panel of the jury. Where a man is tried for a capital offence by a jury, all of whose names were not put into the box before they began to draw the panel, and the statute in terms required that they should be put into the box, the court said that the statute was directory.

Now let us look at this statute. It provides that the register of the city of Washington shall make out a list of persons whom he deems best qualified as jurors; the clerks of Georgetown and the county the same. It says, "the officers aforesaid shall select." The gentlemen say it was a power conferred upon these three men jointly; each man must carry to that meeting a greater number than the amount to be selected. The register of Washington must carry more than four hundred, because out of his list is to be selected four hundred, and so as to the others If he carries only four hundred there cannot be much of a selection. He has then to carry, according to their construction, more than four hundred, in order that the other two may select. The statute says he shall make out a list of those whom he deems best qualified for jurors, and each of the others do the same; and the officers aforesaid shall select from the list made out by the register of Washington, four hundred names, and from the others so many. They say that that is wholly illegal and void, unless they all three unite in making this selection. Is it so, or is this provision merely directory? Does the failure of the three to act jointly vitiate the panel or not? Is it a power granted to three to be exercised by the three together, or can it be exercised by each one for himself? Suppose only two of them met—suppose there is no clerk alive in Georgetown, or in the county, and the time comes round when they are to make the selection, what are we to do then? We cannot have any jury in that part of the District; you cannot have any jury. If it is a power given to the three, each and all three must unite in exercising it. Two cannot exercise it. Nay, more: suppose they are all three together, and two of them agree upon a man while a third differs, what is to be done? There is no power given in that case. The inference is that the majority shall govern. That, I suppose, is an ordinary rule. There is no provision for it. What then was the intention of the legislature? It was to get a list of jurors prepared by men not concerned in trials in court, criminal or civil, not partisans, but men bound by their official position to do justice, and to make out a list equally as they could between all the contending parties. Each man makes out his list; he has exercised his best judgment. Is he prepared to submit that judgment to the other parties or not? I mean, is the law mandatory or is it directory? Does anybody complain? No. Does anybody say there is any irregularity except this misapplication of the law? No. What does Judge Savage say in the case I read from 7th Wendell: "That where it was by the mistake of the parties, it does not usually vitiate." There must be corruption, and the corruption must be alleged and proved; but this is not the mode by which that charge of corruption can be investigated and established. There is a mode, undoubtedly, by which the United States might have reached any irregularity, but it cannot be by this process of challenging the array. The statute, then, means to get an honest and unbiased jury, and although there were, and are now, and always will be, persons residing in the same town,

differing in their political sentiments—some for, and some against, the government; some sympathizing and some not sympathizing—yet Congress has invested these men with discretion; has given them a directory authority, and if these officers had made a mistake in the exercise of that authority thus given to them, and the law is directory, then that mistake does not vitiate the panel.

May it please your honor, the argument of *ab inconreniente* is a very appropriate one here. If it be true that this whole list of jurors is illegal, and cannot be passed upon, I ask your honor where are you going to get a jury until next February.

Mr. PIERREPONT. The statute provides the mode.

Mr. BRADLEY. I am answered that the statute provides the mode. Why, if your honor please, does not this law affect the civil as well as the criminal court? Does the statute provide for that? Did Congress mean when they said, that if the panel is exhausted the court should order the marshal to empannel a jury, that the court should order a jury to be summoned when there has been no jury returned or empannelled or listed? Can it be pretended here, if the court pleases, that if these officers, the register of the city of Washington, the clerk of Georgetown, and the clerk of the county, had never met to perform the duty under that law, that the court could have ordered a jury to be summoned or the marshal to go out and summon talesmen? It is made to depend entirely upon the exhaustion of a "panel," and a "panel" means a "legal panel." This list of names is no panel unless it is legally here. There is no return of the jurors, because the list of jurors put into the clerk's hands, according to their theory, is no list, and there being no list and no return, there is no panel, and there being no panel it cannot be exhausted, and if it is not exhausted then the marshal cannot summon talesmen.

Mr. PIERREPONT. Our argument is, that the panel is illegally summoned.

Mr. BRADLEY. Why, may it please your honor, an illegal panel is no panel at all. The very ground upon which they proceed is, that there is no jury here. If there is a jury here let them go on and try the case. It is because there is no jury here that they seek now to summon a jury here, and there is no jury here they say because these officers failed to discharge their duty according to law, to make their returns according to law. Therefore there being no return, no panel, I ask how the panel can be exhausted. That is the question. Let me read that passage again. I believe my learned friend has confounded words here.

* * "In a capital case, where the said panel shall have been exhausted by reason of challenge or otherwise, the court, before whom such capital case is pending, may, in its discretion, order additional names to be drawn; and if all the names in the box shall have been drawn out and no jury found; the court may order the jury to summon talesmen until a jury shall be found, and if a jury be required for the circuit court, the twenty-six persons whose names shall first be drawn shall constitute the jury for that term, and the names of the persons drawn as aforesaid shall not be again placed in such box for the period of two years. If any person, whose name is so drawn, shall have died or removed from the district, or has become otherwise disabled from serving as a juror, the said register and clerks shall draw from the box another name who shall serve instead, and after the requisite number of jurors shall have been so drawn, the said box shall be again sealed and delivered to the clerk of the circuit court as aforesaid."

Now, sir, if there are no such persons legally selected, drawn, or summoned, how can there be a panel. How can the marshal proceed to summon a panel in the place of that exhausted by challenge or otherwise, when there is no panel to be so exhausted. He cannot do it, in my humble view. I think the intention of Congress in this matter is perfectly clear, and, therefore, I shall not further discuss that question. I contend, therefore, that there is no ground upon which this challenge of array can stand.

The DISTRICT ATTORNEY. I do not rise for the purpose of arguing the motion before the court, but, with the permission of your honor, and my learned friend, simply to say a word or two regarding a certain statement in one of the newspapers of the day to which my attention has just been called. It is an item in the New York Herald, purporting to be telegraphed from this city. The article is not very complimentary to myself, but as my friend is spoken of in very high terms, I am not disposed to quarrel with the writer, for, as a generous-hearted man, I am more anxious for the reputation of my friend than I am for my own. What is intimated in it, I would not think of sufficient importance to be called to the attention of the court, were it not that allusion has been made to it here by the learned counsel who last addressed your honor He stated that there was some reason not made known for the motion which we have submitted. I deem it due to myself to say——

Mr. BRADLEY. I beg your pardon if I have said anything wrong. I thought it was a fair retort upon what was said by Judge Pierrepont.

The DISTRICT ATTORNEY. Notwithstanding the disclaimer of the gentleman to impute any wrong motive to us in submitting the motion now before your honor, I think, inasmuch as public reference has been made to it here, it is due to my position before the country to say a word. I will here say, then, that there is no one who would more earnestly and sincerely deprecate any appeal to religious prejudices than myself. Politicians may speak, think, and act as they please, but for my part I would drive from the halls of justice the demon of party spirit and religious fanaticism. I trust in God the day will never come when a judge, or a jury, will be influenced in the discharge of the highest and most solemn duty that could possibly be devolved upon human beings by political or religious considerations.

In regard to the construction which has been given by the learned gentleman to that part of the act which invests the court with power to order the marshal, when the panel has been exhausted by challenge or otherwise, to summon jurors, I deem it also proper to say that the marshal would be entrusted with power, with a right, to summon no other than white persons. All I desire——

Mr. BRADLEY. I beg your honor's pardon, but this subject has been very fully discussed by counsel on both sides, and I hope no further discusion will take place.

The DISTRICT ATTORNEY. Very well, sir, I am satisfied. I only intended to say a word or two.

The COURT. I do not see how it would be possible for me to render my opinion on this question to day. We have a great deal of business before the supreme court, sitting in *banc*, and we have a session to-morrow for the purpose of concluding that business for the term. The court is to meet at 2 o'clock on that day, and, as it is expected several very important decisions will then be rendered, it is proper and necessary that opportunity should be afforded for consultation with regard to them. I will endeavor, however, to be ready to give an opinion upon this question to-morrow morning, and in order to hasten the progress of the cause, and that no time may be lost by adjourning now—an hour before our usual time—if it will be agreeable to counsel on either side, we will meet to-morrow morning at 9 o'clock.

Counsel on either side expressing their assent, the court thereupon adjourned until to-morrow morning at 9 o'clock.

JUNE 12, 1867.

The court was opened at 10 o'clock.

The COURT then said: In regard to the motion of the district attorney to quash the array, or to challenge the array granted upon the affidavit of Samuel Doug-

lass, register of Washington city, I have considered the argument advanced by learned counsel on both sides, and I will now proceed to pronounce my opinion in regard to the motion:

The act of Congress, approved June 16, 1862, entitled "an act for the selection of jurors to serve in the several courts of the District of Columbia," provides for the selection of jurors in the following manner:

First. It makes it the duty of the register of the city of Washington, on or before the first day of February, to prepare a list of such of the white male citizens, taxpayers residing within this city, whom he may deem best qualified to serve as jurors, in which he may include the names of such qualified perossn as were on his list for the previous year, but who did not serve as jurors; the clerk of the levy court is also required to make a list, by the same time and in like manner, from such persons qualified to serve as jurors who reside in that portion of the District not included in either of the cities of Washington or Georgetown, and the clerk of the city of Georgetown is required to make, at the same time and manner, a list of persons qualified to serve as jurors, from citizens of similar qualifications residing in Georgetown. And each of these officers is required to preserve such list, so made, in the archives of his office, and to transmit the same to his successor.

The making of these several lists is to be the work of each officer in his separate official capacity.

The lists for the three principal divisions of the District being thus prepared, it is made the duty of these three officers to act together, and select, in their joint capacity, from the lists so prepared as aforesaid by the register of Washington city, the names of four hundred persons, and from the Georgetown lists the names of eighty persons, and from the lists prepared by the levy court the names of forty persons.

The first section, which imposes the duty of preparing the lists of qualified jurors, treats of that duty as the duty of these officers respectively. Each one is, in the express language of the act, "to make a list," and each is permitted, by the law, to place upon his list the names of such qualified persons as were on the list of the previous year, as, "in the discretion of the officer making the same," may seem proper. The lists are to be made by them, and kept by them respectively, each one preparing and having the charge and safe keeping of his own list of the persons for his respective district.

About this there can be no doubt, and, indeed, there is no controversy in this case. When we come to the second section of the act, which provides for the number of names to be selected from these several lists of persons qualified to serve as jurors, persons of whose qualifications each of these officers is to judge severally within his own jurisdiction or precinct, we find that the legislature no longer uses the word respective or respectively, but proceeds to declare, *in ipsissimis verbis*, "that the officers aforesaid" (all of them, not one or two, but all three of them) "shall select from the list of the register of Washington city the names of four hundred person, from that of the clerk of Georgetown eighty persons, and from that of the clerk of the levy court forty persons." While the work of preparing the three lists is the several labor of the officers, independent of one another, the work of *selecting* the five hundred and twenty names is devolved upon "the officers aforesaid," the whole three conjunctly. It may not, perhaps, be necessary that they should all meet together, and at the same time and place agree upon the four hundred names to be taken from the Washington list, or eighty from the Georgetown list, or the forty from the county list, but certain it is, that all "the officers aforesaid" shall select the number of names prescribed by the statute. If one of the clerks only shall make the selection from the list prepared by himself, or even if two of them shall make the selection, this will not meet the requirement of the law.

The principle has been too well established by a long current of decisions to

be now questioned, that when the law, enjoining upon three or more the duty of performing an act, without giving to a majority the power to act in the premises, all must act, or the action of those who do act is a nullity, and there is not in the statute a question, one single word or syllable, that looks in the least towards a selection to be made from the three lists, or any of them, except by the united judgment of three officers upon whom the duty is imposed.

It is just as certain, therefore, that the entire three must act in making the selection of five hundred and twenty names for jurors, as that each of the clerks and the register is to prepare his own lists severally.

After these five hundred and twenty names shall have been selected by "the officers aforesaid," then the fourth section of the act of Congress further provides, that "the names selected from said lists shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names cannot be seen, and placed in a box to be provided by the register and clerks aforesaid, which box shall be sealed, and after being thoroughly shaken, shall be delivered to the clerk" of this court. The fifth section provides, that when juries are needed for any of the courts during the year, the register and city clerks, and the clerk of this court, shall meet at the city hall, and such juries shall be drawn by the clerk of this court, who is to publicly break the seal of the box and proceed to draw the requisite number of names.

Such are, briefly stated, the provisions of the act of Congress upon which the motion in this case to quash the array is rested, as I understand them, and as I apprehend they must be understood by everybody possessed of ordinary capacity, and free from the bias of interest or prejudice. There can be no other construction put upon these provisions, which will not do violence to, and, indeed, utterly pervert the language used by the legislature to convey their intention. In enacting these provisions it was doubtless the intention of Congress no longer to leave in the hands of one man—the marshal, or any other single man—the power of selecting juries, in whole or in part, except in the exigencies of certain cases, for which they provided in the same act, and which cases are of rare occurrence. This power, vested oftentimes in marshals and sheriffs, nobody doubts, had heretofore been often grossly abused, and in many instances made the instrument of injustice and wrong, and Congress thought it would better serve the purposes of justice if it should institute the combined selective power to three or four officers, the register of Washington city, the clerk of Georgetown, the clerk of the levy court, and the clerk of the supreme court, in the place of the much abused and arbitrary solitary power of the marshal. This language, in my judgement, expresses the intention as clearly as any idea can be pictured by the English language. Each of these officers was, doubtless, intended to act as a safeguard against any abuse which the partiality, bias, or corrupt disposition of the other might possibly allure him to commit.

The affidavit of Samuel E. Douglass, the register of Washington city at the time of the selection, made in January or February last, of the names from which the present panel of jurors is taken, shows, first, that neither the clerk of Georgetown, nor of the levy court, saw one single name on his list, much less aided or co-operated with him in selecting the four hundred which the law requires that these three "officers aforesaid" should select, and that he did not see a single name upon the list of either of the others, or co-operate in selecting from their lists. On the contrary, it shows that each of these three officers put into the box the number of names specified in the act for their respective jurisdictions, each independently of the other, and without the slightest regard to the judgment or consent of either of the other two.

The affidavit further shows, that after the selection of the names to be put in the box had been thus made, in utter disregard of the requirements of the act of Congress in that behalf, instead of sealing up the box and thoroughly shaking it, and then depositing it with the clerk of the supreme court, as required by the

fourth section, and then meeting afterwards in the office of the clerk of the court to witness him break the seal and draw the names of the jury required for the present term of this court, as provided for in the fifth section of the act, the clerk of Georgetown city at the same time, though in the presence of the clerk of the court and the other officers, proceeded to draw from the box the names of this present panel, to which challenge is now made. This was also a most reprehensible disregard of the plain provisions of the act. These are the facts upon which the application to quash the array is grounded. The question presented by the law, and the facts, (which are all admitted by the demurrer,) for the decision of the court, is twofold in its character:

First. Does the law of Congress require that the judgment of all three of the officers named therein should, either united or severally, pass upon the entire five hundred and twenty names required to go into the box in making this selection from the three lists, or does it only require that the clerk of Georgetown only should pass judgment in selecting the eighty names from that city, the clerk of the levy court upon the forty to be chosen from the rural portion of the District, and the register of Washington to select the four hundred to be taken from this city?

Secondly. Whether, if the act of Congress does require the judgment of all three of these officers to be exercised in the selection of the entire five hundred and twenty names to be placed in the box, the placing them there in the manner described by Mr. Douglass in his affidavit, is cause of principal challenge to the array.

I am clear in my conviction that the law requires the united judgment of the three officers named in the act in the selection of the entire number of names to be placed in the box, for the reasons that I have already mentioned.

Is, then, the several action of each of these officers in selecting exclusively from his own list, and not even looking at the lists of either of the others, or even knowing any of the names taken from these lists to be placed in the box, as sworn to by Mr. Douglass, and admitted by the counsel for the prisoner, a ground in law upon which to set aside the array.

It is argued by the counsel for the prisoner that it is not; that nothing except a defect in the summoning of a jury by the sheriff is principal cause of challenge to the array in England by the common law, which we have inherited from our British ancestors, and which is the law in this District, by which we are to be governed in the decision of this question; and the case of the Queen against O'Connell and others, has been cited by the counsel for the prisoner at the bar as conclusive of the question in this case.

I confess that my veneration for the common law of England may sometimes even run into a weakness, but the day is long passed with me, and should be with everybody, when decisions of courts and mere arbitrary utterances of test-writers, however hoary with age, or exalted in position, are to be accepted as Procustian beds, on which other courts and other people are bound to fit themselves, with or without reason. With me no decision is of weight that lacks of reason for its solid foundation, unless it be the decision of a superior court that holds a mastery over me, whose mandates, right or wrong, reasonable or unreasonable, I am compelled by law to obey.

The grand object of jury trials in this country or in England is, or ought to be, and is supposed to be, a fair and impartial investigation of the subject in controversy by honest and upright men, who are entirely indifferent between the parties to the suit. It was to subserve this view that challenges were permitted to be made either to the array or to the poll, and either by principle or by favor. Some persons entertain the idea that challenges, and many other advantages, are given by the common law to the prisoner exclusively, and nothing to the State. This is as if we should say, that all the provisions and formularies of the common law were invented simply for the purpose of pre-

venting the public from obtaining its just demands upon the guilty offender against society. It is as though such formularies were a mere means and ceremony by which the accused is to derive every advantage and have every means to assist in setting him at large, without respect to the rights of an offended community. I entertain a different opinion. I concur with Chief Justice Gibson, of Pennsylvania, in the case of the Commonwealth *vs.* Joliffe, 7th Watt, 585, in which he says: "Total impunity was not the end proposed by the legislature, nor ought it, perhaps, to be desired by the philantropist. It is not easy to discover a conclusive reason why the punishment of the felon ought to move our tenderest sympathies, or why the laws ought to be defectively construed in purpose that he might elude them. To rob the executioner of his victim when the laws are sanguinary, it might be an achievement to boast of, but we are told at the mitigation of our penal code that the certainty of conviction to be expected from mildness of punishment would more than compensate in its effects the want of that severity which was thought to deter by its terrors. * * If it be further indulged, a shorter and certainly a cheaper mode of obtaining its end would be to have no prosecution at all. But it is one which would scarce be found to answer in the state of the times. Why, then, should the prisoner have more than serves" (speaking of challenges) "to give him a fair trial? and his twenty peremptory challenges certainly gives him that, and having secured to him all he had a right to require, it must have occurred to the legislature that the commonwealth must have a fair trial too."

Let us now see whether the case of O'Connell and the Queen, tried in 1844, is one which we ought, according to the counsel of the prisoner at the bar, to accept as conclusive upon the question now before us. In that case, by 3d and 4th William IV, chapter 19, and by 4th and 5th William IV, chapter 8th, certain provisions were made regulating the mode in which certain books should be prepared, from which the sheriff was required to make certain a selection of juries.

In the preparation of one or more of the lists from which these jury books were made a number of names of persons qualified as jurors was omitted. A challenge to the array was made in this case on the ground of the omission, and it was held that such omission in one of the preliminary lists was not a sufficient cause of challenge to the array. But that is by no means the present case. To make the case at bar similar to that of O'Connell, and bring it within the ruling in that case, it would be necessary that Congress should, in the law for summoning jurors, have incorporated a provision requiring that the three officers, who stand in the place of the sheriff, should have prepared their respective lists from the lists of the assessors, or some other officers, and that in making the lists of said other officers some negligent or fraudulent omission should have occurred. It may be admitted, without any prejudice to the motion in this case, that the omission by such assessors or other officers to make a complete list from the list or jury book, if we may so term it, used by the register and clerks, in order to inform them as to who all the persons legally qualified as jurors in their respective jurisdictions were, would not have been of sufficient ground of itself to set up this motion. And yet I am free to say that, in my opinion, it ought to be sufficient. But admitting it were not, it is a very different case from the one before us. Here Congress requires that we combine the judgment of three officers in selecting the persons of whom the juries are to be composed. Each of these officers is to be a guard over the other two, to prevent him from perpetrating a wrong against individuals or the community by putting in the box, from which jurors for a whole year are to be taken in all the courts, the names of persons who are disqualified, either from want of mental capacity, moral rectitude, purity of blood, want of proper age, or tax paying qualifications.

If one of these officers, as Mr. Douglass did on the occasion of filling the jury-box on February last, should exercise an exclusive judgment in the selection of 400 out of the 520 names put into the box, the safeguard which Congress sought, by the act, to throw around the selection of jurors, is not worth a fig, and the law was not worth the time consumed in its passage. Mr. Douglass may be, and doubtless is, an honest, fair-minded and honorable man; but the law cannot be relaxed on that account, for we cannot tell how long the office may continue to be filled by such men. It was enacted to prevent dishonest or prejudiced or partial men from carrying out their dishonesty, prejudices or partiality, and we have no right to relax the law because of our belief in the fairness of any man.

The public, as well as individuals, have a right to exact a rigid compliance with the requirements of the law, and the only way to secure a fair and impartial verdict, both to the public and the prisoner, in this, as in all other cases, is to see that the law be fully, fairly, and impartially executed in all its requirements. The three officers specified in the act of Congress stand in the place of the marshal or sheriff. Juries who are summoned to try cases in this court must not only be summoned properly, but must be selected in obedience to the requirements of the laws. The case of O'Connell can scarcely be said to be regarded as law in this country, where mere forms at this day are considered as of mere secondary importance when compared with the substance of the law. If any partiality or default in the sheriff or deputy in arraying the panel gives either party the right to challenge the array, as is undoubtedly the law, *vide* 3d Blackstone, 350; then such partiality or default on the part of those who are substituted for the sheriff must likewise be good cause of challenge to the array. In the State of New York it has been held, in the case of Gardner *vs.* Turner, 9th Johnson, page 260, that the drawing of seventy-two names by the clerk from the jury-box, instead of thirty-six, the number required by law, and the selecting of thirty-six by him out of the seventy-two, and his direction to the sheriff to summon the thirty-six thus selected by him, was such default as would sustain a challenge to the array. In the case of James Maguire, plaintiff in error, *vs.* The People, defendents in error, (2d Parker's Criminal Reports, page 148,) it was held that, inasmuch as the district attorney was required by statute to issue his precept for summoning the petit jury, a jury summoned by the sheriff, without such precept was wrongfully summoned, and the conviction by such jury was held to be erroneous, and the judgment of conviction was reversed. In the State of Delaware, prior to the year 1850, the law regulating the summoning of juries required, that in cases of oyer and terminer the jury should consist of the thirty-six jurors who are summoned to attend the court of general sessions of the peace, and twelve others specially summoned for the court of oyer and terminer, which two courts were held at the same time by the same judges, with the exception, that in cases of oyer all four of the law judges sat together instead of the three who held the court of general sessions.

In the case of the State *vs.* John Windsor, 5th Han., 512, indicted for the murder of his wife, which was tried in 1850, before a very able bench, and by counsel distinguished for their learning and ability on either side, a case which was fully argued and considered, it was decided that inasmuch as the act of assembly provided that the thirty-six jurors summoned for the court of general sessions should also be summoned to attend upon the court of oyer and terminer; and as these general sessions jurors had not been summoned to attend the court of oyer and terminer, although they were there in attendance, the mere failure of the sheriff to insert in their summons a notice to attend the court of oyer and terminer was sufficient ground upon which to quash the entire array, and it was done accordingly. It would seem at first view that the challenge upon such grounds, in either of these cases was an objection, merely sticking in the bark, and yet such is the careful regard which courts in this country enter-

tain in respect to the selection of jurors, and the securing of a fair and impartial trial on either side, that they require a strict compliance with the very letter of the law, no matter from which side the challenge may be moved. It is just as important to have fairness and impartiality upon the one side as upon the other, otherwise the trial of a criminal, however deep his infamy, may be made a mere farce through which his enlargements is to be procured. If it be important to observe the mere forms of the law, it is, in my opinion, of much graver importance fully to comply with the least of its substantial requirements.

Believing, therefore, that the substantial requirements of the act of Congress in this case, providing for the selection of a fair and impartial jury, have not been complied with, but entirely set at naught, and that there has been grave default upon the part of these officers whom that act has substituted in the place of the marshal, for the purpose of having them exercise united judgment in the selection of all the persons whose names are to go in the jury-box, I am constrained to allow the motion of challenge in this case. I do not consider the fact that the present panel were improperly drawn by the clerk of Georgetown, who had no right to put his hand into the box, because the objection which I have allowed lies even deeper than that.

It is, therefore, ordered by the court that the present panel be set aside, and that the marshal of the District of Columbia do now proceed to summon a jury of talesmen.

Judge Fisher subsequently said: My order is that the marshal summon twenty-six talesmen.

Thereupon the court adjourned till to-morrow morning at 10 o'clock.

JUNE 13, 1867.

The court was opened at 10 o'clock, when the clerk proceeded to call over the names of talesmen summoned yesterday, in accordance with the directions of the court.

The first name called was that of Mr. William B. Todd, who responded.

The name of George Mattingly was next called. He failed to answer.

The COURT said: I will remark, with respect to Mr. Mattingly, that I have received a letter from him, as I have, also, from numerous other gentlemen who have been summoned, asking to be excused from serving. I will read Mr. Mattingly's letter. I have no doubt that what he states is true. The letter is as follows:

"WASHINGTON, D. C., *June* 13, 1867.

"DEAR SIR: I was summoned yesterday on the jury to try Surratt, and I have to say that I cannot possibly serve. Whilst I am willing to serve you, and my country, at all times, I must respectfully ask you to excuse me on this occasion. I will here state, that I am exempt on two grounds, so that you will have no difficulty in excusing me. First, I am engaged in carrying the United States mails; and secondly, I am over age, having attained my sixty-fifth year on the 24th of December, 1866.

"Very respectfully, yours,

"GEORGE MATTINGLY.

"Hon. GEORGE P. FISHER."

Mr. Mattingly is a very excellent man. He has served here a number of times on the grand jury, and I have no doubt that he would make a good juror, but if he is over age of course he is exempt, and not only exempt, but he cannot lawfully serve. What do you say, gentlemen?

Mr. BRADLEY. He will have to be excused if he is over sixty-five years of age.

The COURT. Yes, I have no doubt of it.

Mr. Clerk, you will strike his name from the lists.

William H. Tenney was called, and responded.

William P. Dole was next called, but failed to answer.

Andrew J. Joyce was called, and responded.

The COURT. Was not Mr. Joyce on the grand jury that found this bill?

Mr. JOYCE. No, sir.

Mr. WILSON. I thought he was. He was on a previous one, I remember.

Mr. JOYCE. Yes, sir; I was on the grand jury previous to that, seventy-one days.

Mr. BRADLEY. It would make no difference, your honor, as far as this case is concerned, as the law makes no exemption in case of talesmen.

The COURT. Mr. Joyce hands me this note:

"WASHINGTON, D. C., *June* 13, 1867.

"This certifies that the child of Mr. A. J. Joyce is very dangerously ill, and that his presence is necessary at home.

"THOMAS MILLER, M. D."

The COURT. What have you to say to that?

Mr. BRADLEY. All we can say is that it is subject to the disposal of the court.

The COURT. I do not wish to excuse anybody where there is objection made to the excuse that may be presented, but I think wherever there is a good and valid excuse the party ought to be relieved.

The DISTRICT ATTORNEY. If your honor pleases, under the circumstances, I shall interpose no objection to excusing Mr. Joyce.

The COURT. Mr. Bradley do you interpose any objection?

Mr. BRADLEY. In his case, if you honor pleases, we have to submit entirely to the order of the court. We wish to be saved the necessity of either objecting or assenting.

The COURT. I find that, under the eighth section of the act for summoning jurors, there is a discretion reposed in the court, and as I would not wish to be required to sit upon a jury in a case when my child was lying at the point of death, and my physician advised my presence to be necessary at home, I do not feel that it would be just for me to require Mr. Joyce to do so. He is excused.

Franck Taylor was called, and responded.

The COURT. I have also received a note from Mr. Taylor, which I will read:

"WASHINGTON, *June* 13, 1867.

"The undersigned, with great regret, begs leave to state to your honor that he has been detailed as juryman in the Surratt case, now pending; that he is not at this time, and has not been for several days, in a condition of health fit for that duty, nor able to undertake it without a prospect of delaying and embarrassing the case; that some business affairs now maturing need urgently his personal attention, an attention which is not of a nature possibly to be delegated to others; and that, if said affairs cannot receive said attention at his hands within a few days, his credit and business standing will be seriously injured in two foreign countries.

"For these reasons, which the undersigned begs leave to substantiate by his affidavit, he respectfully prays your honor to allow him to discharge his duty to the law, and to the court, at any other moment than the present one.

"Remaining with much respect and truth, your honor's obedient servant,

"FRANCK TAYLOR.

"Hon. GEORGE P. FISHER."

Mr. BRADLEY. He might make oath to the statement of facts in the letter and not be placed under the necessity of making an independent affidavit.

The COURT. I will say that Mr. Taylor stated to me last night, after receiving the summons, that he had some business relations with the government,

making it necessary for him to raise very large sums of money in the transaction of that business, which business is transacted between him and persons residing in foreign countries, and unless he had the opportunity to make those business arrangements, it might prove extremely prejudicial to his credit.

Mr. BRADLEY. Will your honor pardon me? We on both sides concur that this is a matter entirely within the discretion of the court; and we take it for granted that there may be excuses, personal, and relating solely to the private affairs of individuals, which they do not want to have made public. I would suggest to your honor, therefore, that we do not desire to hear any reasons of that nature which may be assigned by the party.

The COURT. Mr. Taylor, I am quite sure, does not object to having the reasons he urges made known. He is a man of good standing, and he is desirous of maintaining that good standing.

Mr. PIERREPONT. As I understand my learned friend, we both agree, that in any of these cases that may arise we do not ask to hear the reasons, but leave it entirely with the court.

The COURT. Very well. With regard to the case of Mr. Taylor, I will state that I know from the statement he made to me that it is of the first importance that he be relieved in order to attend to his business arrangements. He is excused.

John R. Elvans was called, and responded.

DAVID P. HOLLOWAY was called, when he rose and said:

I beg leave to state to the court that I suppose I am not competent to sit as a juror in this District, from the fact that I am not a citizen of the District. For the last six years I have voted in the State of Indiana, and am in business there—keeping a furnished house for the purpose of retaining my residence in that State I never voted here, and do not contemplate doing so, but expect soon to return to Indiana.

The COURT. Are you residing within the limits of this District at this time?

Mr. HOLLOWAY. I do not know what technical meaning is given to the word "residing." I am staying here.

The COURT. Keeping house and transacting business here?

Mr. HOLLOWAY. I am not keeping house.

The COURT. Are you transacting business here?

Mr. HOLLOWAY. I am transacting business here. I am engaged temporarily in business here.

Mr. PIERREPONT. Will your honor permit us to make a suggestion, for although we all agree to leave this matter to your honor, yet we feel that we have a duty to perform in the way of making such suggestions to you as may occur to us. With the permission of the court I would say, that if light excuses are taken, judging from the experience we have all had in such matters, the men best fitted to serve as jurors are those who are engaged in important business for themselves; and there is some danger, unless the rule is adhered to somewhat strictly, that men, from a view to their private interests alone, will get rid of this very high duty which they owe to their country. We know very well that they wish to be excused, as it is very natural for them to, but they should be made to feel the importance of this great duty which they are called upon to perform.

The COURT. The law says that if the party is a resident here, is over twenty-one and under sixty-five years of age, a good and lawful man, who has never been convicted of a felony or misdemeanor involving moral turpitude——

Mr. BRADLEY. And a "taxpayer." [Laughter.]

The COURT. He is a "taxpayer?"

Mr. HOLLOWAY. No, sir. I have paid an internal revenue tax here, but I pay my other tax in Indiana.

The COURT. Do you pay any tax on real estate, or a personal tax, here?

Mr. HOLLOWAY. I do not.

The COURT. Then you are disqualified? Mr. Holloway is excused, Mr. Clerk.

THOMAS BLAGDEN being called, said:

I have formed an opinion. I have read the testimony.

The COURT. That will be for you to state, Mr. Blagden, when you come to answer on your *voire dire*.

Riley A. Shinn was called, and responded.

RICHARD M. HALL being called, said:

I would like to represent to your honor that I feel that it would be almost impossible for me to sit here as a juror in this case. I am entirely alone in my business; and it is of that character—the agency business—that not only would my own interests materially suffer by being required to serve as a juror in this case, but the interests of a great many other persons who have confided business to me. There are several matters that demand my attention this week—matters that I could not delegate to a clerk in my office, as I do not think he would be able to carry on the transactions. They require my personal attention. The interests of other persons would suffer, perhaps, a great deal more than my own, and I may state beside that that I am living in the country with my family, and if I am required to serve here, they will be left alone, and in a very lonely place. I will, therefore, be under the necessity either of moving back into the city, or providing for their care in some other way.

The COURT. Your excuse, Mr. Hall, would let off nine out of every ten of the jury.

Mr. HALL. I will state further that my business is one that I have just begun—that of real estate agency—having just left the office of register of deeds, and that in consequence of its being so young, and from the fact that I can delegate no one to attend to it for me, it would suffer materially—in fact irreparably if I have to remain here two or three weeks.

The COURT. I hope you will not have to stay three or four weeks.

Thomas J S. Perry was called, and responded.

Franklin Philp was called, but failed to respond.

The COURT. Mr. Philp addressed me a letter. I do not know whether I have it or not.

Mr. WILSON. Mr. Gooding (addressing the marshal who was standing near the judge) I gave you a letter which he addressed to me. I will state to the court that he addressed me a letter saying, that it would be necessary for him to leave the city immediately on matters of importance, and asking to be excused.

The letter was handed to the court by the marshal.

The COURT. Mr. Philp came to see me last night, and I referred him to the attorneys on either side; and now it seems that he wrote a letter to Mr. Wilson stating, that he was engaged in public business which would require him to leave in this morning's train. I suppose he is not here.

Mr. WILSON. He is not here, I infer from that letter, although I told him that he would incur a grave responsibility by going away.

The COURT. I told him he had better see Mr. Merrick and Mr. Carrington, or Mr. Wilson.

Mr. MERRICK. He saw me, your honor, and I told him that I did not feel that we had the power to excuse him, and that the proper course for him to pursue would be to present himself here this morning to answer to his name, and to present to your honor for your consideration the excuse he made to me. He stated to me that his excuse was that at present being engaged in public business, some matters connected with the public, he had, in execution of some of his business, already taken passage for Europe in a steamer to sail some time in July.

The MARSHAL. I would state that Mr. Philp was served in person.

The COURT. Well, he is not here—proceed to call the other names.

The DISTICT ATTORNEY. If your honor please, it seems to me there ought to be some process to enforce the attendance of Mr. Philp. He has been advised by the assistant prosecuting officer, and by counsel representing the prisoner, that he should be here to respond to the summons of the court, and if he had any reason to present why he should be excused, to offer it then. While I have been disposed to accommodate gentlemen, as far I can, consistently with my sense of duty to the public, I now feel that it is incumbent upon me to interpose. This is a very important and solemn trial, and surely every American citizen should feel that there is an obligation resting upon him to respond to any call which is made upon him by the court. I cannot remain silent when the case is presented here of a gentleman who has been served with process by the court failing to appear in consequence of mere private arrangements, which would be disturbed by his appearing in court in answer to its summons.

The COURT. Do you ask for an attachment?

The DISTRICT ATTORNEY. I do ask for an attachment against him.

The COURT. Let the attachment issue.

Mr. BRADLEY. Where is he?

Mr. WILSON. His letter states that he was going to New York.

Mr. BRADLEY. Then he has gone to New York?

Mr. WILSON. I presume so.

The DISTRICT ATTORNEY. I wish the attachment issued and placed in the hands of the marshal of the District, and then I will feel it my duty to take whatever steps may be necessary to vindicate the power of the court, and to enforce his appearance.

The MARSHAL. At what time shall the attachment be returnable?

The DISTRICT ATTORNEY. Immediately.

George H. Plant was called, but failed to respond.

The COURT. I have a note upon my table from Mr. Plant, in which he says: "I am subpœnaed by the marshal to court to-day. I am advised by my physician that I am too unwell to attend, and hope the court will excuse me."

The DISTRICT ATTORNEY. If your honor please, will you be kind enough to let me see that letter. While I am not disposed, for a moment, to discredit any statement which Mr. Plant may make, orally or in writing, I submit that it is his duty to appear in person before the court, in obedience to the summons, if he possibly can do so. If not, I submit that it is his duty to send to your honor a certificate of the physician. Surely, sir, if he was unable personally to obtain that, he has friends who would do him that favor.

I again say that, in any criminal case and surely in a case of this importance (where every one, although willing to do his duty, I hope desires that the duty of serving as a juror may fall upon some one else,) should appear in person, or he should satisfy the court of his inability personally to attend in the manner which this court has always heretofore required. I hope your honor will not act in this case in determining upon the excuses of jurors upon written communications of this kind.

The COURT. The gentleman who handed me this letter was informed by me that such a letter would not do; that nothing other than the certificate of his physician, stating his inability to attend on account of his illness, would satisfy the court. Perhaps it may be that such a certificate may be coming forthwith; but it has not reached here yet.

Mr. PIERREPONT. We can pass on.

The DISTICT ATTORNEY. I will only say, sir, that if it is not coming forthwith I shall feel it my duty to ask for an attachment.

The COURT. Very well, the attachment shall issue.

The CLERK. Shall I issue one now?

The COURT. Yes, you may issue one now, but defer awhile sending it out.

Reuben B. Clark was called, and responded.

John Van Reswick was called, and responded.

SAMUEL P. BROWN was called, when he rose and said: I will state to the court that I have been out of health for some time, and under the treatment of a physician, and I have a certificate here which I presume will be sufficient.

The certificate was then read, as follows:

"WASHINGTON, D. C., *June* 13, 1867.

"I certify that Mr. S. P. Brown has been under my treatment for a disease of his kidneys, which, in my opinion, renders him unable to endure the fatigue attendant upon being a juryman.

"JAMES B. KEASBY, *M. D.*"

Mr. BROWN. I will add, that I have been out of health for some time, and it is impossible for me to sit very long at any one period.

The COURT. I understand something about that Mr. Brown. I cannot object to excusing you, sir. You are excused.

Z. D. Gilman was called, and responded.

Joseph F. Brown was called, and responded.

Zenas C. Robbins was called, and responded.

Cornelius Wendell was called, and responded.

Valentine Harbaugh was called, and responded.

The COURT. I have here a certificate from Dr. Elliott, stating that Mr. Harbaugh is physically unable to discharge the duties incumbent upon a juror. The certificate adds: "He is now under my professional care. In addition to this, he has two members of his family sick, who require his constant attention."

Mr. BRADLEY. Mr. Harbaugh has private family matters which need not be disclosed publicly here. They are, to my personal knowledge, sufficient to justify the court in excusing him.

The COURT. I am satisfied that this is a case where the gentleman ought to be excused.

Joseph Gerhardt was called, and responded.

Mr. GERHARDT. If your honor please, I do not think I am qualified. I do not pay any taxes on real estate. Besides, sir, I do not hear well. Persons have to speak very loud to me in order to enable me to hear them.

The DISTRICT ATTORNEY. Is your hearing defective with regard to both of your ears?

Mr. GERHARDT. Yes, sir; but one a little more than the other. (Laughter.)

The DISTRICT ATTORNEY. I do not think there is any legal objection to General Gerhardt, although he does not pay any tax on real estate, which I am surprised to hear, because I thought he was a very substantial and energetic citizen, and thought, therefore, he had accumulated a considerable amount of real estate; but he does pay tax on personal property, and I think, although I have a very feeble voice myself, that I can make myself heard.

Mr. BRADLEY, (in rather a low tone.) He, sitting in the jury box, could not hear half of what was said by a witness standing at this desk, (a distance of ten feet.) He can hardly hear me now. (Mr. Gerhardt standing at this time between three and four feet from Mr. B.)

Mr. GERHARDT. That is so, your honor. (Prolonged laughter.)

Mr. BRADLEY. He hasn't heard half of what I said, although I spoke loud enough to be heard away outside of this bar; he only guessed at it. (Laughter.) However, it is none of my business.

The COURT. How long have you been deaf?

Mr. GERHARDT. I am not quite deaf, but I do not hear well.

The COURT. I guess you can be made to hear, Mr. Gerhardt.

Mr. PIERREPONT. Yes, sir; we will endeavor to speak loud enough.

Mr. GERHARDT. I will state further, that during the war I was so disabled as to render it impossible for me to sit any great length of time. (Suppressed laughter.)

The COURT. Oh, I guess you can manage to get along, Mr. Gerhardt. Proceed with the next, Mr. Clerk.

Horatio N. Easby was called, and responded.

W. W. MOORE, being called, said:

I beg to be excused. I am not at all well. I have been unwell for two or three weeks; but the principal reason that I would urge why I desire to be excused is, that I am engaged in a business that will really suffer if I am required to sit through this case. It is not a business of my own, but one of public accommodation. The other party who is there in the management of it is at present absent from the city. It is the Metropolitan railroad that I refer to as the business which I am engaged in managing.

The DISTRICT ATTORNEY. How old are you—are you sixty-five?

Mr. MOORE. I am not quite that.

The DISTRICT ATTORNEY. I think it is hardly necessary for me to state that there is no legal objection to Captain Moore, and the excuse is hardly sufficient. I think, upon reflection, the juror himself will see it; because, if the court in ruling upon these excuses is to be governed by private considerations—the fact that the juror will be subjected to private inconvenience, that his business or the business of his employer will suffer—it is difficult to imagine when a jury can be had in this case.

The COURT. Yes; as much as I would desire to accommodate Mr. Moore, he will have to commend himself to me by very strong considerations as to the injury that would result to his business from his absence before I can consent to excuse him on that ground. If he should bring a certificate from his physician that it would be seriously prejudicial to his health, it might be satisfactory.

Mr. MOORE. I could easily have obtained a certificate if I had known the rules of proceeding here. I can get it, your honor, as soon as I can see my physician.

The COURT. Very well, Mr. Moore. Mr. Clerk, pass on to the next.

Thomas Perry was called, and responded.

W. P. Dole was called, but failed to respond.

The COURT. Mr. Dole met me this morning on my way to the court-house and put into my hands this letter:

"WASHINGTON, *June* 13, 1867.

"SIR: Being summoned as a juror to attend your court, I beg leave to say that I am not a citizen of the District, and never was.

"Respectfully, yours,

"WILLIAM P. DOLE.

"Hon. GEORGE P. FISHER."

Mr. WILSON. He is an owner of real estate.

The DISTRICT ATTORNEY. I will ask for an attachment against Mr. Dole; that is the only response I can make.

The COURT. I asked him if he was a taxpayer. He said he paid tax on an unimproved lot that he had; that makes him a taxpayer. Whether he is a resident here or not I do not know.

Mr. WILSON. I understand he has recently purchased a lot, and intends soon to build a house on it. He can answer for himself when he comes.

The COURT. Yes; let the attachment issue.

The MARSHAL. There is one other that I have summoned; his name is J. H. Crane. He was summoned in the place of Mr. Mattingly, who was excused by your honor because of being over sixty-five years of age.

J. H. Crane was then called, and responded.

The calling of the list having been concluded Mr. ELVANS said: I neglected to state to your honor when my name was called, that within two years past I have served a full term as a grand juror. If your honor will allow me I will state, that in reply to an inquiry made at that time as to whether the service which I had thus rendered would exempt me from further service for two years I understood your honor to say it would. I would ask your honor whether I understood properly, and whether, if so, I am not exempt?

Mr. BRADLEY. If that were so, we would have to take off nearly half of this list.

The DISTRICT ATTORNEY. I do not think, your honor, that talesmen are exempt because of such service. I do not think there is any difficulty about it, sir. I hold in my hands the 12th statutes, p. 428. The 3d section of the Act of June 16, 1862, with which your honor is familiar, declares who shall be exempted. It says;

"Be it further enacted, that the mayors of the cities of Washington and Georgetown, all judicial officers, salaried officers of the government of the United States, commissioners of police, and those connected with the police or fire department, counsellors and attorneys-at-law, ministers of the gospel and priests of every denomination, practising physicians, surgeons, keepers of hospitals, asylums, alms-houses, or other charitable institutions created by, or under the laws relating to the District of Columbia, captains and masters, and other persons employed on vessels navigating the waters of said district, and keepers of public ferries, shall be exempted from jury duty, and their names shall not be placed in the list aforesaid."

Then, your honor will observe in the 1st section, what the law says, in reference to those who have rendered jury duty. I will read it:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown, and the levy court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, taxpayers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District in which the lists may be included, in the discretion of the officer making the same, the names of the previous year, but who did not serve as jurors, and the lists thus made by the register and clerks aforesaid, shall be kept by them respectively, and be delivered over to their successors in office."

By implication it would seem that these officers who are charged with the duty of making out the list, and from which the jury are to be selected, shall be confined to those who had not served within the time prescribed before these lists were prepared. But when talesmen are summoned there is no limitation, as your honor will observe, by reference to the other sections of the Act, which has been so frequently brought to the attention of your honor.

The COURT. I do not see that there is any provision in the act exempting Mr. Elvans.

The DISTRICT ATTORNEY. Now, if your honor please, I understand that Captain Moore, one of the jurors who requested your honor to excuse him, stated that he could obtain a certificate from a physician, of his physical inability to act in that capacity, and by the permission of the marshal, I believe, he has gone to get a certificate.

Mr. BRADLEY. It was my fault that he went. I understood the court to say that he had better go quick.

The DISTRICT ATTORNEY. I am not complaining of the fact that he has gone for the purpose of getting a certificate, but I simply desire to say, although it

may not be necessary in his particular case, that I hope your honor will not act upon the written certificate of a physician, but will satisfy your own judgment as to the capacity of the juror to serve, from the personal examination of the juror, and of the physician upon whose opinion he relies. They should both appear before the court. Your honor should be satisfied from your own examination, aided as far as it is possible for us to aid you, by cross-examination on the part of the counsel who appear for either the government or the accused.

The COURT. I shall examine as I have done in all these cases, by putting questions to them myself.

Mr. BRADLEY. There have now been seven jurors excused out of the twenty-six. We want to get them before the panel is attempted to be selected for this case.

The COURT. Is there any objection to that?

Mr. BRADLEY. I believe there is no objection, sir.

The COURT. A juryman has been sommoned in the place of Mr. Mattingly, who was excused, being disqualified by over age.

Mr. BRADLEY. Then six only are to be summoned.

The COURT. Gentlemen the marshal informs me that it will probably take him until about one o'clock before he can have the parties here who will be summoned in the place of those who have been excused. If you have no objection we will take a recess until that time, and let these gentlemen who are here, and who have some business to attend to, go until that time.

Mr. MERRICK. Before your honor takes any action in the matter, I would like to consult with Mr. Bradley in relation to something that may facilitate our action after one o'clock.

After a brief consultation, Mr. MERRICK said: What we were going to suggest to your honor is this: That whilst the jury, of course, in accordance with the suggestion of the court, can leave the room until the time indicated, we on both sides think that it will hasten the matter if the marshal, instead of simply bringing in at one o'clock, seven jurors to supply the place of those excused, would bring in about twenty, in view of the fact which has become apparent that a great many will seek to be excused. One juror who is present has indicated to your honor an excuse, which will have to be considered when he comes upon his *voire dire*, and which will probably show him to be disqualified, and we do not know how far that examination—on the *voire dire*—of the others may thin the panel.

Mr. PIERREPONT. I think we quite agree to that, your honor, if it is within the law, and I suppose it is, though I do not pretend to know about it.

The COURT. I am rather doubtful about it.

Mr. BRADLEY. Your honor will pardon me, but by turning to the act of December, 1865, I think you will find an exposition.

The COURT. Let us see what that act is, because this 7th section only gives the power to order a sufficient number of jurors to make up the panel.

Mr. BRADLEY. You have ordered that, and now as I understand it, it is left to the discretion of the court to summon as many more as may be necessary.

The COURT. I am doubtful, Mr. Bradley, and I do not know whether we had not better go on, unless there is something in that act, and examine these gentlemen upon their *voire dire*, so as to get what you can from this panel which has already been made up. I think that would be the legitimate mode of proceeding with this business.

Mr. BRADLEY. We cannot proceed, if your honor please, to select a jury until the panel of twenty-six is complete. We have the right out of that twenty-six.

The COURT. I see the act of 1865 does not bear upon this question at all.

Mr. PIERREPONT. I have not, if your honor please, the slightest doubt of their right to have the fullest panel, but there cannot certainly be any irregularity in going on.

Mr. MERRICK. We object to that. We require the panel to be full.

Mr. PIERREPONT. We have not a word to say if they require it.

The COURT. Then there is no other course left but for the court to take a recess until one o'clock.

The court thereupon took a recess until the hour named.

A few minutes after one o'clock the court was reconvened, when

The COURT said: One of the parties who served the subpœna on Mr. Plant yesterday, brings me this note:

"WASHINGTON, D. C., *June* 1, 1867.

"I certify that I have occasionally attended Mr. George H. Plant with nephretis, brought about by fatigue and exposure. I would judge that the duties of a juror would tend to aggravate his disease.

"JOHN C. RILEY, *M. D.*"

The COURT. I do not know whether Mr. Plant is in the city or not.

The MARSHAL. No, sir; he is in Baltimore.

The COURT. Mr. Moore hands me the following certificate:

"WASHINGTON, D. C., *June* 13, 1867.

"This is to certify that Mr. W. W. Moore has been for many years a patient of mine, and from my knowledge of his constitution and condition of health I would regard him as unfit for performing the duties of a juror without the risk of being himself injured by the confinement, and the peculiar duties which would devolve upon him.

"W. P. JOHNSON, *M. D.*"

The COURT. Upon examination of Mr, Moore I do not think that he would be able to withstand the fatigue of a trial of this sort, and I purpose excusing him. I have no doubt he would make a most excellent juryman, if he could only stand the fatigue. He is therefore excused.

The Clerk then proceeded to call the names of the six additional jurors who had been summoned during the recess.

William M. Shuster was called, but failed to respond.

Robert Ball was called, and responded.

Henry M. Knight was called, and responded.

John F. Ellis was called, and responded.

Samuel Fowler was called, but failed to respond.

Terrence Drury was called, and responded.

The CLERK. Four out of the six answer, your honor.

The COURT. What are the names of the absent ones.

The CLERK. Mr. Shuster and Mr. Fowler do not respond.

The MARSHAL. Mr. Shuster was served by copy. He was not at his house, but his wife expected him there between twelve and one. He was served with a copy, and it may be that he has not received it. As to Mr. Fowler, he was served in person.

Mr. BRADLEY. There are two Mr. Samuel Fowlers; which one is it?

The MARSHAL. The banker.

The DISTRICT ATTORNEY. I feel it my duty to ask for an attachment against Mr. Fowler.

The COURT. Let the attachment issue.

Mr. BRADLEY. He will be here I am sure, for he is a law-abiding citizen.

The MARSHAL. I would here state, your honor, that Mr. Dole, for whom an attachment was issued, is not to be found, and that Mr. Plant, for whom an attachment was also issued, has gone to Baltimore.

The court then directed the clerk to call over the names of those who had responded, and were present.

The CLERK proceeded to call as follows:

William B. Todd, William H. Tenney, John R. Elvans, Thomas Blagden, Riley A. Shinn, Richard M. Hall.

Mr. BRADLEY. He has gone to get a certificate of attorney.

Thomas J. S. Perry, Reuben B. Clark, John Van Reswick, Zadok D. Gilman, Joseph F. Brown, Zenas C. Robbins, Cornelius Wendell, Joseph Gerhardt.

Mr. BRADLEY. He is with his physician in the ante-chamber.

Horatio N. Easby, Thomas Berry, John H. Crane, William M. Shuster.

Mr. BRADLEY. He is not present.

Robert Ball, Henry M. Knight, John F. Ellis.

The CLERK. Including those who have been summoned, but who are not here at this moment, there are twenty-four, your honor.

Mr. PIERREPONT. Does your honor find that there would be any objection to having an order made that some fifteen or twenty, or some larger number, be subpœnaed, if we on both sides consent to it? We are all desirous of consenting to that, either orally, or in writing.

Mr. BRADLEY. It will not appear of record, sir, how many are summoned, if there are enough summoned to make up the panel.

Mr. PIERREPONT. That is all we want on both sides.

The CLERK. O, yes, it will appear of record. The subsequent order to fill the vacancies which have occurred, will appear.

Mr. PIERREPONT. Would there be any error in it if it did so appear?

The COURT. I fear there might be.

Mr. PIERREPONT. Well, sir, we do not want any error. We only want to show that we on both sides are anxious to facilitate the matter in any way we can.

The COURT. As I understand, all the jurors who have been properly summoned answer, with the exception of two, Messrs. Dole and Plant, who are returned *non est*.

Mr. Samuel Fowler being brought in at this stage of the proceedings, under attachment,

The COURT said: Mr. Fowler, you were attached for non-obedience to the summons of the court to be here at one o'clock.

Mr. FOWLER. I meant no disrespect to the court, sir; I intended to come in time, but mistook the hour.

The COURT. I suppose we will have to excuse you under those circumstances, as you are pretty near the time. (It being then half-past one.—REP.)

The COURT. You have twenty-two jurors, gentlemen, now in attendance for this panel. You, therefore, require four more.

The CLERK. An attachment is out for two—Messrs. Dole and Plant.

The COURT. Yes; but those attachments cannot, in all probability, be served to-day.

Mr. MERRICK. The panel would be one short even were those who have been attached here.

The COURT. Yes, sir; inasmuch as Mr. Moore has been excused since.

Mr. MERRICK. We want one more, anyhow.

The MARSHAL. We can get him in twenty minutes, I think.

William Morrison, J. Russell Barr, and Jedediah Giddings next appeared in court, in obedience to the summons of the marshal completing the panel of twenty-six jurors.

Mr. BRADLEY. If your honor please, we are ready to proceed to empanel the jury. Before doing so, however, we think it our duty, in behalf of the prisoner, to file our challenge to the present array. Your honor has virtually decided the question, and we do not desire to take up any time in its argument. We simply wish that it may be filed, so that it may be passed upon.

Mr. Bradley then handed to the clerk the following challenge:

"In the Supreme Court of the District of Columbia. The United States *vs.* John H. Surratt. In the Criminal Court, March term, 1867.

"And the said marshal of the District of Columbia, in obedience to the order of the court, made in this cause on the 12th of June instant, this day makes return that he hath summoned, and now hath in court here, twenty-six jurors, talesmen, as a panel from which to form a jury to try the said cause, and the names of the said twenty-six jurors so returned being called by the clerk of said court, and they having answered to their names as they were called, the said John H. Surratt, by his attorneys, doth challenge the array of the said panel, because he saith it doth plainly appear by the records and proceedings of the court in this cause that no jurors have ever been summoned according to law to serve during the present term of this court; that no panel has ever been lawfully returned to this present term of the court, and no names of jurors, duly and lawfully summoned, have been placed in the box provided for in the fourth section of the act of Congress, entitled, "An act providing for the selection of jurors to serve in the several courts of the District," approved 16th June, 1862, on or before the 1st of February, 1867, to serve for the ensuing year, wherefore he prays judgment that the panel now returned by the said marshal, and now in court here, be quashed.

"MERRICK, BRADLEY & BRADLEY,
"*Attorneys for Surratt.*"

After consultation on the part of counsel on behalf of the United States and for the prisoner, the following names were presented to the court as having been mutually agreed upon as the jurors in the case:

William B. Todd, John P. Elvans, Thomas Blagden, Richard M. Hall, Thomas J. S. Perry, William H. Shuster, Z. D. Gilman, Horatio N. Easby, Thomas Berry, Robert Ball, Samuel Fowler, and J. Russell Barr, all of whom, except Mr. Barr, were directed to appear at the book to be sworn in as jurors.

Mr. BLAGDEN, (one of the jurors.) I wish to repeat the objection that I made this morning, that I feel myself unfit to act as juror in this case. I have both formed and expressed an opinion upon it.

The COURT. Have you formed a decided opinion?

Mr. BLAGDEN. I have done so, sir.

Mr. PIERREPONT. I hope your honor will ascertain whether this gentleman has formed such an opinion that he would not be governed by the law and the evidence as it may be brought before him. He has not heard any evidence in the case.

The DISTRICT ATTORNEY. I may say, if your honor please, that this doctrine of the gentleman being disqualified to act as a juror because of his having expressed an opinion, should be the subject of inquiry as to whether he has formed an opinion on all the evidence, and as to whether he would not be prepared to decide according to the law and evidence.

The COURT. If he is sworn on his *voire dire* I will try to ascertain that fact.

The DISTRICT ATTORNEY. We do not care to have that done. We are willing to trust this gentleman in his judgment on the law and the evidence.

Mr. BLAGDEN. If the court please, I have read a great deal upon this subject and have formed my opinion very decidedly.

Mr. FOWLER, (a juror.) That, also, is my case.

Mr. GILMAN, (a juror.) And mine.

Mr. PERRY, (a juror.) And mine; and besides, I am opposed to capital punishment.

Mr. GILMAN. I, also, am opposed to capital punishment.

Mr. PIERREPONT. Let me say to the court that we have agreed, upon both sides, not to ask any of these gentlemen to be sworn upon their *voir dire* until we believe they are such men as will render a verdict in accordance with the

law and the evidence. There has not been one word of evidence published, except such as may have appeared in the newspapers.

The COURT. One gentleman says, however, he is conscientiously opposed to capital punishment.

Mr. PIERREPONT. We should like to know whether his scruples would go to the extent that he could not conscientiously bring in a verdict according to the law and the evidence.

The COURT. That would be a proper test by which to ascertain the extent of his conscientious convictions.

Mr. PIERREPONT. I wish these gentlemen would consider this question a little in the light of a duty to the public. The counsel on both sides have, with more courtesy towards each other, such as I have never seen in the whole course of my experience, tried to get a jury of eminent citizens who were honest, and who were above suspicion, against whose verdict nobody could raise a whisper. We have earnestly desired to produce that result and had hoped we had accomplished it. We think jurymen owe something to the community in which they live.

Mr. SHUSTER, (one of the jurors.) While appreciating the compliment given to us, I think that probably some of us, and I most assuredly, have formed and entertained decided opinions in regard to this case. I speak for myself, and others, as the question has been discussed among those who are here as jurors.

Mr. PIERREPONT. Before proceeding further, I hope the court will ascertain from the jurors who suggest conscientious scruples on the subject of capital punishment, to what extent his conscientious scruples go.

Mr. MERRICK. I hope I may do something to facilitate the obtaining of this panel. A jury sitting in the case has but very little to do with the consequences of their verdict. They are sworn to find a verdict according to the law and evidence. The sentence on their verdict is a matter which, as good citizens, they have nothing to do with in their capacity as jurors. If they are opposed to capital punishment, in their political relations to the government as citizens, they may exert their influence in having the law providing for capital punishment modified; but as jurors, in the box, they have nothing to do but to render their verdict in accordance with the law and the evidence.

The COURT. Still, when a person is called to be sworn as a juror in a capital case, if, on the one hand, he shall say that such are his conscientious scruples that he could not, no matter how strong the evidence might be, render a verdict of guilty, it seems to me that the court would not be justified in admitting that juror to be sworn. While on the other hand, if he declared to the court that while he has formed and expressed an opinion in relation to the guilt or innocence of the party, which opinion it would not be possible or probable that any evidence might overcome, such person would not, I think, be a proper person to discharge the duties devolving upon him as a juror by the law.

Mr. GILMAN, (a juror.) I have formed and expressed an opinion publicly. I am decidedly prejudiced in the case. I do not think any evidence I might hear would change my view upon the subject.

Mr. EASBY (a juror.) I beg leave to say, with the permission of the court, that I think it nothing more than fair that jurors be permitted to express their opinion upon this subject. This case has been discussed in the newspapers; the evidence given on the trial of the other conspirators in the assassination of Mr. Lincoln has been published, and for myself I must confess that I am decidedly biased in such a way that I do not feel that I could do justice in this case; whether I might do injustice to the prisoner, or to the public, is a matter I cannot say; but I do not feel that I am in such a condition of mind as to enable me to sit upon this jury. I do not feel like taking the life of this man in my hands. I feel utterly disqualified, and I beg to protest against being compelled to sit on the jury in this case. These gentlemen for the prosecution and defence have

arranged the matter to suit themselves, and have referred in a very complimentary manner to those who have been selected, but while appreciating compliments, we cannot say for ourselves that if we acquit this man we shall be perfectly satisfied with the verdict, or if we convict him we shall satisfy our own conscience. For myself at least, I repeat, that I feel myself utterly disqualified to sit upon this jury. I should feel that I was committing murder if I should bring in a verdict of guilty, and I might feel if I brought in a verdict of not guilty, that I was instrumental in putting forth a man upon the public who was guilty of murder. I am not in a proper state of mind to try the case. If the court chooses, however, to compel me to sit upon the jury under the circumstances; of course I cannot help it, I should hear the evidence and endeavor to bring in a verdict according to the law and the evidence, and although against my own convictions of right and wrong. The responsibility will rest upon some one else, not upon me.

The COURT. After having heard what has been said by the jurors, I do not see any other course than to put each man upon his *voire dire.*

Mr. BRADLEY. That is our opinion upon both sides, we have done our best upon both sides, and I think that at least we deserve credit for the spirit we have manifested.

The COURT. The counsel on both sides deserve great credit for the efforts they have made on this occasion. The jurors summoned will now be examined in order upon their *voire dire.*

WILLIAM B. TODD, sworn upon his *voire dire,* and examined as follows:

By the COURT:

Q. Have you formed or expressed an opinion in regard to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. To a certain extent I may have formed an opinion, I do not remember having expressed an opinion.

Q. Would that opinion have such a influence upon your judgment that you would not be able, upon the oath you have taken in consequence of such opinion, whatever may be the extent of it, to render a fair, honest, and impartial verdict upon the evidence adduced on both sides in the trial?

A. I do not think it would.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case in which the punishment shall be death, provided the evidence should warrant you in finding such a verdict?

A. None at all.

The COURT. Does the counsel for the United States wish to challenge this juror.

The DISTRICT ATTORNEY. The court will remember that this question arose a short time ago for the first time since the passage of the act of Congress giving to the United States five peremptory challenges. I then submitted whether it was right to require the United States first to challenge a juror if it desires to do so.

The COURT. The law is silent upon that subject, and in this instance the rule will be established to require the counsel to alternate in the order of their challenge.

No challenge having been made, Mr. Todd was accordingly sworn in as a juror.

WILLIAM H. TENNEY, duly sworn and examined upon his *voire dire,* as follows:

By the COURT:

Q. Have you formed or expresed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. I have.

Q. Under the oath you have taken, do you say to the court that that opinion, so formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner after having heard all the testimony in the case?

A. I think I could give as good a verdict as if I had never heard of Surratt.

Q. Have you conscientious scruples against rendering a verdict of guilty where the punishment is death, provided the evidence be such as would satisfy you of the guilt of the party accused?

A. I have none.

Q. But you say you have formed and expressed an opinion as to the guilt or innocence of the party accused?

A. I have.

By the DISTRICT ATTORNEY

Q. Will you state when and to whom you have expressed that opinion?

A. I have expressed the opinion generally, in conversation with my family.

Q. Upon what evidence was this opinion based?

A. Not upon any evidence, but upon common report, such as Surratts leaving the country.

Q. That is all?

A. That is all. Not upon any knowledge of the facts of the case, or from hearing any evidence in relation to it. Upon common report, such as Surratts escaping from the country.

By Mr. BRADLEY:

Q. Have you not talked very freely on the subject, and expressed your opinions very decidedly?

A. I do not think I have expressed any opinion publicly. It has been in casual conversation with my family. It may be possible that I have expressed it to others than to members of my family, but I do not think I have.

The COURT. I think, under the ruling of Judge Marshall, in the case of Burr, this juror is exceptionable.

The DISTRICT ATTORNEY. I hope, before ruling definitely upon that question, the court will hear argument upon it. I had prepared myself upon this question, knowing it to be one of great importance. In a case of such notoriety as this, I suppose there is hardly an intelligent man in the whole country who has not, to some extent, formed and expressed an opinion. I hope your honor will not consider it presumption on my part, in asking to be heard upon it.

The COURT. I have no pride of opinion upon the subject, and am ready to hear argument upon it. It will, perhaps, be better to go through with the examination of the other jurymen, and let this question be argued to-morrow. Mr. Tenney will stand aside for the present.

JOHN R. ELVANS, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, so formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. Your honor will allow me to say that I have expressed myself so decidedly, and in such a manner as would lead me to fear the impressions of the community as to my ability or disposition to render a fair verdict. I believe, personally, that I am sufficiently dispassionate to be able to render a verdict in accordance with the evidence. But I fear the effect of the public manner in which I have spoken of this particular case on the community as to my disposition to give a fair verdict.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case in which the punishment is death, provided the evidence shall satisfy you of the guilt of the party?

A. None at all.

The COURT. You will stand aside for the present.

THOMAS BLAGDEN, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. I have.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed or expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I should fear it would.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment is death, provided the evidence shall warrant you in that finding?

A. I have not.

The COURT. You may stand aside for the present.

RILEY A. SHINN, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I fear it would, though I do not know what the evidence may be.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment is death, provided the evidence shall warrant you in such finding?

A. Not in the least.

By the DISTRICT ATTORNEY:

Q. Where did you express this opinion?

A. While the trial was going on at the arsenal.

Q. Upon what evidence or what information was this opinion, which you expressed, based?

A. From reading the evidence on the trial of the others.

Q. Where did you read that evidence?

A. In a book published by the government. I have one of those books.
The COURT. You may stand aside for the present.

RICHARD M. HALL, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?
A. Yes, sir; I have.
Q. You have both formed and expressed an opinion?
A. Yes, sir.
Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?
A. There are some facts in connection with the case that I think would very strongly prejudice my mind.
Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment is death, provided the evidence is such as to warrant that finding?
A. I have not.

By the DISTRICT ATTORNEY:

Q. Do you suppose that if the evidence were entirely different from what you have seen, your mind has been so far affected by what you have read that you would be unable to do justice in this case?
A. It has not been altogether upon the evidence I have read that I have formed an opinion about it. There are circumstances that always attend certain occurrences which produce their effect, and there are some circumstances in connection with this case that have constantly, from the beginning, warped my judgment. I do not know whether I would be able to overcome them. It would have to be pretty strong evidence.
Q. Do you mean to say that your prejudices and feelings have been so excited that you would be unable to decide according to the law and the evidence, upon your oath as a juror?
A. I would, if compelled to sit as a juror, listen to the facts and to the evidence, but I have no hesitancy in saying that my judgment would be greatly influenced by circumstances.

By Mr. BRADLEY:

Q. That is to say all the evidence would come to you through a prejudiced medium?
A. Yes, sir.
The COURT. You may stand aside for the present.

THOMAS J. S. PERRY, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?
A. I think I did at the time of the trial, two years ago.
Q. You have both formed and expressed an opinion?
A. Yes, sir.
Q. Under the oath you have taken do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I do not think it would.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment is death, provided the evidence shall satisfy you of such finding?

A. I have.

Q. Have you such scruples as would prevent you from rendering a verdict of guilty in such case?

A. I think I have.

The COURT. You are discharged.

REUBEN B. CLARKE, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have, sir, decidedly.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I think it would influence my opinion.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment is death, provided the evidence shall satisfy you of such finding?

A. None at all.

By the DISTRICT ATTORNEY:

Q. When was that opinion formed and expressed?

A. It was formed in the early part of the trial below there.

Q. Upon what evidence or information was this opinion based?

A. From common rumor, and from what I could gather by being at the court below.

Q. How often did you attend that trial?

A. About three or four days, I judge.

Q. Did you read the evidence?

A. I read the evidence.

Q. The whole evidence on that trial?

A. I read it from newspaper reports as published in the Intelligencer.

The COURT. You are excused from further attendance.

JOHN VAN RISWICK, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I am not aware that I ever have either formed or expressed an opinion.

Q. Have you any conscientious scruples against rendering a verdict of guilty in a case in which the punishment is death, provided the evidence shall warrant you in such a finding?

A. I have not.

By Mr. PIERREPONT:

Q. Do you live in Washington?

A. I do.

Q. Were you here at the time of the former trial of the conspirators?

A. I was.

Q. Did you read the evidence on that trial?
A. I believe I did.
Q. Did you express or form any opinion as to the effect of it?
A. None, so far as the prisoner is concerned.
Q. And you have not now an opinion as to his guilt or innocence?
A. I have no decided opinion.
Q. You have not said anything about it?
A. I am not aware of having said anything in regard to his guilt or innocence.

By the DISTRICT ATTORNEY:

Q. You have no decided opinion upon the subject at all?
A. None, as to his guilt or innocence.
Q. Have you formed any opinion in regard to the guilt or innocence of the other conspirators?

Question objected to by counsel for defence.

Mr. PIERREPONT. If the court please, we wish to argue that objection, if it is insisted upon. The prisoner is indicted as a conspirator with others. If he is not guilty with others, he is not guilty at all.

Mr. MERRICK. It would be exceedingly difficult to get a jury of men who had not formed or expressed an opinion as to the guilt or innocence of those persons who are charged with the murder of the late President of the United States, and of the guilt or innocence of the other parties named in the indictment as conspirators with him is permitted to be drawn out. I apprehend you could not get a jury in this District, and scarcely one in the United States. I presume there is scarcely a gentleman in the United States who has not formed and expressed an opinion that Booth shot Lincoln. I apprehend there are very few who have not formed or expressed an opinion that the mother of the prisoner at the bar suffered death without competent testimony to convict her, and so we might go through in an inquiry in relation to all the others. To allow this question would entirely prevent the empannelling a jury. The question for this jury to try, is, according to the indictment, whether or not John H. Surratt is guilty of the murder of Abraham Lincoln. The indictment charges that this deed is the result of a conspiracy between various parties; that the prisoner at the bar was one of the conspirators, and that he committed the murder. The parties summoned as jurors may entertain the opinion that two, three, four, or five of the others charged in the indictment as conspirators, did conspire, and at the same time may not have formed any opinion at all as to whether or not the prisoner at the bar was the sixth conspirator. Or the party may entertain the opinion that the prisoner at the bar was in a conspiracy of some kind or other, or in the conspiracy to murder the President of the United States, and may have formed no opinion as to whether, in point of fact, the prisoner did commit the murder. I therefore submit to your honor that the inquiry made by the District Attorney, is an inquiry relating to matters beyond the limit of investigation, for the purpose of ascertaining the qualifications of a juror.

Mr. PIERREPONT. If your honor please, before we knew in what mode we should have to meet this question of challenge, the question received the consideration of my learned friend, the District Attorney, with myself and his associate. We gave it a very careful examination, and we came to the conclusion founded, we believe, upon competent authority, that this was a proper question to be asked and answered, in order to get at the qualification of a juror in a case of this kind under such an indictment. The reason urged by my learned friend against it is, that he believes, I do not know but that, he asserts, that there are very few in the United States who do not believe Mrs. Surratt was illegally executed. Therefore we could not get a jury competent to try the prisoner at the bar, if this question is allowed to be put.

Mr. MERRICK. My brother will allow me to say that he did not state my entire proposition. I said there were few intelligent persons in the United States who had not formed an opinion upon the question of Booth's participation in the killing of Lincoln, and there were also, I presumed, but few persons who had not formed an opinion that Mrs. Surratt had been executed upon insufficient evidence.

Mr. PIERREPONT. Precisely; that is the very statement, except that my friend has made it a little stronger than I did. I did not intend to overstate it, as there is nothing gained by over statement, but it seems I did not come up to the mark. My friend urged this reason on the question of law about the admissibility or propriety of the question propounded to the juror, as to whether your honor should exclude the question. Now, I do not suppose that is any reason at all in law, or that your honors will give it a moment's consideration. Both sides of this case have certainly acted very fairly. I have no complaint whatever to make of my learned friends. They have acted like gentlemen, and I think we have tried to act honestly on both sides; that we have tried to get an honest and impartial jury. We have done all that we could, and have exhausted our power, and now find ourselves thrown back upon the law. We have got to take that, and we intend to take it. Wherever it may lead us, however long it may take us to get at it, we intend to pursue it. We have prepared ourselves upon this very question, and now, if your honor please, if you are not entirely familiar with the indictment, it will be necessary for us to bring it into court. The indictment charges the prisoner at the bar with having entered into a conspiracy with other parties—Mrs. Surratt, Booth, Herold, Payne, &c.—mentioned by name. Now, then, if a juror comes here and says he does not believe these other conspirators were guilty, there could not, by any possibility, be any guilt upon the part of this party, because he is only charged as a conspirator with other persons, and if a juror has made up his mind in such a way as that, the evidence will not change it; that the other parties charged as conspirators in this indictment with the prisoner were innocent, then he is not in a frame of mind such as will qualify him to act as a juror, because, having expressed that opinion, it is utterly impossible for him to find the prisoner guilty.

The DISTRICT ATTORNEY. In addition to the point which has been suggested by my learned colleague, that this question is entirely relevant to the indictment which charges the prisoner at the bar with being engaged in a conspiracy with others named, I will suggest, that if a juror has expressed an opinion in regard to any of the parties named as conspirators in the perpetration of the crime alleged in the indictment, he has expressed an opinion on a part of the case, and I may add, in regard to a material part of the case—I think it may so affect the mind of the juror that he will not be prepared to form an impartial judgment, and he is therefore an incompetent juror upon that ground. Moreover, not only does this indictment charge that the prisoner co-operated with others in the perpetration of the offence named, but it distinctly alleges, with others to the jurors unknown. Surely, then, if the juror has expressed an opinion in regard to the guilt or innocence of the one, does he not by implication, however he may not in so many words mention the name of the prisoner, express some opinion in regard to his guilt or innocence. In regard to the character of the offence charged against him in the indictment, if the juror says, "although I may believe (by way of illustration) that the prisoner did commit a certain crime, my opinion is that he is not guilty as indicted," is he a competent juror? If the party is not guilty as indicted, however great the crime he may have committed, he is not guilty, and under the law cannot be punished. The statement of this juror is, that he has formed and expressed an opinion which goes to the guilt or innocence of the accused as indicted. I shall have something to say of this hereafter, but I submit that such a statement disqualifies a juror. Again, if your honor please, you observe by the act of Congress, March 3, 1865,

13 Stat. at Large, p. 500, section 2, the government of the United States is allowed five peremptory challenges, and the accused twenty. It provides that in addition to the challenges of the array, or panel, individual jurors for cause or favor shall be tried by the court without the aid of triers. Your honor, then, without the aid of triers, shall determine whether there is good cause for challenging the jurors. If your honor please, the question of fact which was submitted to the decision of the trier is transferred by express legislation to the court; and was it ever heard that counsel are precluded from asking any question which may be calculated to elicit the fact, or tending to instruct the mind of the court in regard to the subject-matter of inquiry? You are the trier as to whether this is an impartial juror. I submit that you cannot do otherwise than to allow the counsel on both sides to ask any question tending to elicit the state of mind in which that person is in regard to the issue which would be submitted to him if sworn as a juror. Now, is not the guilt or innocence of the co-conspirators a material fact? Is it not relevant? And if so, however remotely relevant the question submitted to your honor, we have the right to elucidate the facts upon careful examination. The examination in chief has been conducted by your honor; your honor has submitted certain questions to this juror, and his answers may satisfy your honor's mind that he is a competent or incompetent juror; your honor is the tribunal before which that question of fact is to be tried; you are the judge and jury both; but you will allow us to pursue our cross-examination as we think best, being only restrained by matters which are relevant. If I should ask this juror an entirely irrelevant question, having no connection with the case, you would properly close the door upon me; but will your honor say that the co-conspirators with whom this prisoner is alleged in the indictment to have co-operated are not connected with the very matter we now propose to investigate? Surely not. And therefore we have the right to ask these questions; and for what purpose? It would be a *brutum fulmen* for this act of Congress to make a court a trier if we are not permitted to ask questions tending to develope good cause of challenge in cases where good cause of challenge may be shown upon a cross-examination. My object is merely to enable your honor, by cross-examination, to determine whether this juror is qualified or not. I concur with the learned counsel who spoke in behalf of the prisoner, that it would be exceedingly difficult to empanel a jury if the principle enunciated by your honor is correct. Your honor, I am sure, would not charge me with presumption for asking to be heard with reference to the question of such great importance before making your final decision; but, sir, I do most respectfully submit that the mere forming and expressing an opinion by a juror does not necessarily disqualify him.

Mr. BRADLEY. That, however, is not the question under discussion now.

The DISTRICT ATTORNEY. I know that is not the question, but I referred to it incidentally. We surely have a right to ask a juror a question which will bring before the mind of the court, either directly or indirectly, whether or not this juror has, in point of fact, formed and expressed an opinion. My desire is to enlighten the judgment of the court in reference to this matter.

Mr. BRADLEY. I do not exactly understand, from the argument of the counsel on the other side, what it is that we are going to try. I had read the indictment with some care, and, until what has fallen from my learned brothers on the other side to-day, I supposed I understood for what offence we are to be put on trial; but after what has been said, I am ignorant, as my client is, for what offence he is to be tried. But I will assume that their understanding of the indictment is just, and that he is on trial for conspiracy, and that he is on trial for murder. On the question of his guilt or innocence of either of these a juror has been interrogated; and he has formed no opinion whether he is guilty of murder, and he has formed no opinion as to whether he is guilty of conspiracy,

He has answered these questions distinctly; but now he is asked whether he has formed an opinion as to whether other people were engaged in it or not! Are we to be tried for that? Is that a matter on which we must know whether a juror has formed an opinion? Suppose he believes that other people are guilty, or that other people are innocent; can they throw him out for that reason? Certainly not; and they cannot ask him the question. They can only ask him whether he has formed and expressed an opinion as to the guilt or innocence of the accused. The juror has answered that question distinctly in the negative; and now, can you ask him the question whether he has formed or expressed an opinion as to the guilt or innocence of anybody else?

Mr. PIERREPONT. I suppose we can when he is charged with them.

Mr. BRADLEY. The question is whether he was connected with them, not whether they were guilty. The juror has answered that he has formed no opinion as to whether he was connected with them, and that is the only question that can be put.

I am enlightened again, in another point of view, by this statute to which reference has been made. My learned brethren know perfectly well that before that statute, under the common law, the court was the trier of the fact as well as the adjudicator of the law. It was only when triers were demanded that the question of fact was turned over to triers for decision. Until they were demanded the judge passed upon both the law and the facts; and the only effect of the statute was to so modify the law as not to permit the question of fact to be referred to triers.

The COURT. I suppose the intention of the law was to get rid of triers when challenge was made for favor.

Mr. BRADLEY. Certainly, for favor or for cause. The party had the right to demand triers, but the court would decide unless they were demanded. Is there any change in the mode of conducting the investigation? Did any human being ever hear before when a man is called as a juror and the proper question is put to him by the court, that the counsel on either side may cross-examine him? I confess that I never heard of the practice before.

Mr. PIERREPONT. I never heard the contrary, and I have known of 50 cases at the New York bar.

Mr. BRADLEY. Then I thank fortune I do not belong to the New York bar. I have heard your honor upon the bench say time and again, "This has gone far enough. I think we can risk him." You have always stopped an examination of a juror just as soon as it has proceeded to the point of ascertaining whether he has formed or expressed an opinion as to the guilt or innocence of the prisoner. But that a juror may be put upon his cross-examination as to whether he is eligible or not, I never heard before.

The question that it is now proposed to ask is unnatural and irrelevant. It is unnatural and irrelevant whether a man has expressed or formed an opinion as to the guilt of other parties charged with the murder of the President. I do not think the question is admissible in any point of view, because, when you come to examine the indictment, there is no such question to be tried by a jury. It is inadmissible because the charge to be tried by this jury is, whether the accused is guilty of the murder of the President. When your honor comes to examine the indictment, with great respect to my friends on the other side, I submit that any one with common sense who reads it, will say that the charge is murder of the President, and that the matter of the conspiracy is merely thrown in.

Mr. PIERREPONT. The whole thing is conspiracy to murder, and in a conspiracy to murder all are principals.

Mr. BRADLEY. That may be New York law, but it is not law here.

Mr. PIERREPONT. We shall desire to bring in the law.

The COURT. I shall ask gentlemen to bring in their authorities and I will then decide it.

Mr. MERRICK. I alluded the other day, incidentally, to the fact that the act of 1854 was at least liable to the construction, that unless the panel is completed by Saturday night the new term will have commenced and this case could not be tried. I hope, therefore, the court will not adjourn now, but will go on until all these jurors shall have been examined.

Mr. BRADLEY. The new term commences at 10 o'clock Monday morning, and we may sit until that time if we please.

Mr. MERRICK. That is true, but Sunday is a *dies non juridicus*.

The COURT. Gentlemen may bring in their authorities and I will decide this question to-morrow morning. In the meantime the witness may stand aside, and the examination of others may be proceeded with.

Z. D. GILMAN, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have formed and expressed an opinion.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I fear it might.

Q. Have you conscientious scruples against finding a verdict of guilty in a case where the punishment is death, provided the evidence be such as to satisfy you of the correctness of that finding?

A. I have.

By Mr. BRADLEY:

Q. Do you mean to say that you could not find a verdict of guilty in a capital case, although you were satisfied the evidence warranted it?

A. I could find a verdict of guilty, I suppose.

By the COURT:

Q. That is the case I put to you, whether you have conscientious scruples such as would prevent you from saying a man was guilty of a capital offence, if the evidence justified that finding?

A. I could say that.

Q. And you could find a verdict of guilty?

A. Yes, sir.

The COURT. You may stand aside for the present.

JOSEPH F. BROWN, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. Yes, sir; frequently.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I think it should not, but I would be afraid to trust myself.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case punishable with death, provided the evidence justified such finding?

A. None, whatever.

The COURT. You may stand aside for the present.

ZENAS C. ROBBINS, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. No, sir; I could not admit that, still in view of my repeated and strong expressions on the subject of the guilt of the prisoner at the bar, and his associates, I think it would be unfair to the prisoner to have me on the jury.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case punishable with death, provided the evidence justified such finding?

A. Not any.

The COURT. You are excused from further attendance.

CORNELIUS WENDELL, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have both formed and expressed.

Q. Under the oath you have taken, do you say that the opinion, thus formed and expressed by you, would bias or prejudice your judgment in making up a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I feel sure it would.

The COURT. You are discharged from further attendance.

JOSEPH GERHARDT, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I think it would.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case punishable with death, provided the evidence justified such finding?

A. I have not.

The COURT. You are discharged from further attendance.

HORATIO N. EASBY, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have, sir.

Q. You have both formed and expressed an opinion?

A. Both formed and expressed.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. Your honor will permit me to say, that ever since the conspiracy, which culminated in the murder of Lincoln, my feelings have been so excited against every person connected with that conspiracy, however remotely, that I think it would be perfectly unfair and unjust to have the life of this party placed in my hands, and, therefore, I do not think I could give an unbiased opinion in this case.

The COURT. You are discharged from further attendance.

THOMAS BERRY, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. It would not.

Q. Have you conscientious scruples against bringing in a verdict of guilty in a case punishable with death, provided the evidence shall satisfy you of the propriety of such finding?

A. No, sir.

The COURT. You may stand aside.

JOHN H. CRANE, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Both formed and expressed.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I do not think it would. I should feel bound to bring in a verdict according to the law and the evidence.

Q. Have you conscientious scruples against bringing in a verdict of guilty in a case punishable with death, provided the evidence justified such finding?

A. I will state to your honor that I am very strongly opposed to capital punishment, and I should have to be satisfied, beyond a doubt, of the guilt of a prisoner before I could bring in a verdict of guilty. If there was a shadow of doubt, I should feel bound to give him the benefit of that doubt. I would not, however, say that I would not bring in a verdict according to the evidence.

The COURT. You may stand aside for the present.

WILLIAM M. SHUSTER, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have, sir.

Q. You have both formed and expressed an opinion?

A. I have.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. If I were obliged to sit upon a jury I would endeavor to render a verdict according to the evidence, but at the same time I feel that I have formed and expressed an opinion, and that I would go into the jury-box somewhat prejudiced; that I would have something to overcome. Having entertained a very unfavorable opinion toward the prisoner, I would not like to go into the jury-box without stating that fact.

The COURT. I think that comes right to the case decided by Chief Justice Marshall, that a witness must start with a fair chance on either side. You are discharged from further attendance on the court.

HENRY M. KNIGHT, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Both formed and expressed an opinion.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I believe it would.

The COURT. You are discharged from further attendance.

ROBERT BALL, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have probably given some expression of an impression formed upon my mind from common rumor, but I do not think I have given any decided expression of opinion, nor have I formed any very decided opinion.

Q. From what you have seen and what you have heard in regard to these rumors, do you believe you would be able to render a fair and impartial verdict, after having heard all the testimony in the case?

A. It is my impression I could do justice to the prisoner as well as to the State.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case punishable with death, where the evidence would justify such finding?

A. None, whatever.

The COURT decided Mr. Ball to be a competent juror, and no challenge being made, he was accordingly sworn as such.

JOHN F. ELLIS, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have, sir.

Q. You have both formed and expressed an opinion?

A. I have.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. It would.

The COURT. You are discharged from further attendance.

SAMUEL FOWLER, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir; on several occasions.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. It would.

The COURT. You are discharged from further attendance.

TERRENCE DRURY, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Both.

Q. Under the oath you have taken, do you state to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I am satisfied it would.

The COURT. You are discharged from further attendance.

WILLIAM H. MORRISON, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. Yes, sir; very decidedly.

Q. Under the oath you have taken, do you state to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. It would.

The COURT. You are discharged from further attendance.

J. RUSSELL BARR, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have formed—I am not certain that I ever expressed an opinion.

Q. Will you say on the oath you have just taken, whether that opinion, so formed by you, would prejudice or bias your judgment in arriving at a fair and impartial conclusion with reference to the guilt or innocence of the prisoner at the bar, after hearing all the evidence in the case?

A. I do not think it would?

Q. You have never expressed any opinion at all?

A. Not that I recollect; I may have done so.

Q. And whatever opinion you have formed is not a decided one?

A. Not a decided one.

Q. You remain open to conviction, free from prejudice and bias?

A. I think so.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment shall be death, provided the evidence shall warrant you in such finding?

A. I have not.

The COURT decided Mr. Barr to be competent as a juror, and no challenge being made, he was accordingly sworn in as such.

JEDEDIAH GITTINGS, duly sworn and examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. You have both formed and expressed an opinion?

A. I have.

Q. Under the oath you have taken, do you say to the court that that opinion, as formed and expressed, would bias or prejudice your judgment in rendering a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the case?

A. I think it would.

The COURT. You are discharged from further attendance.

The court then adjourned until to-morrow at 10 o'clock a. m.

JUNE 14, 1867.

At 10 o'clock Associate Judge Wylie took position upon the bench, and directed the crier to open court.

As soon as the court had been opened, he said:

GENTLEMEN: I regret to have to announce to you this morning that Judge Fisher is quite sick, and unable to attend court. I have a note in my hand to that effect. He does not request me to hold court for him, and if he had, I have other engagements which would render that impossible. I am at present holding the circuit court with a large amount of business before me.

Mr. PIERREPONT. What disposition can be made of all these jurymen who have been subpœnaed here for to-day?

The COURT. I will hear any suggestions you have to make.

Mr. PIERREPONT. I do not know what we can do exactly; I presume we had better talk first among ourselves. I have no doubt, judging from what has passed, that we can agree upon anything amongst ourselves, so far as agreement will do it.

The COURT. But you cannot agree to try the case without a judge.

Mr. PIERREPONT. I would like to know what, in the meantime, is to be done with this large number of jurors. The order was for summoning 100 for this morning, and they, I suppose, are here, or will be. Only three have been empannelled.

The COURT. I have not had an opportunity of examining this recent act of Congress upon the subject, but my impression is, that unless the jury is obtained to-day, the case will have to be continued until the next term of the court.

Mr. MERRICK. To-morrow, your honor, or until Monday morning, as Judge Fisher intimated yesterday.

Mr. PIERREPONT. Let me ask if it is not in the power of your honor to adjourn this court until to-morrow morning, with direction to these same jurymen to appear here then, for if the sickness of Judge Fisher should prove to be but temporary, which I hope it will, we might then succeed in getting a jury this week.

The COURT. I will add that I have also a note from Judge Fisher, stating that in consequence of representations made to him, he is satisfied that Mr. Riggs, who is a talesman, summoned in this case, ought to be excused from service on the jury. He is therefore excused.

Mr. BRADLEY. If your honor will allow me, I would suggest that it would perhaps expedite business, if those persons summoned as jurors, and desiring to be excused, and who have a sufficient and valid excuse should make the same now, and let your honor decide upon it at once. We can in that way get rid of a portion of this number, and have their places supplied by to-morrow morning.

Mr. PIERREPONT. Yes, sir; I think it would be very well, indeed, if your honor can afford the time, to proceed to excuse such as shall present sufficient excuses, who are physically disqualified, or those who ought to be excused for other reasons.

The COURT. Very well; the clerk will proceed to call the list.

Mr. BRADLEY. Mr. George E. Jillard tells me that he is summoned before the grand jury for Monday morning, and, is, therefore, of course, discharged from this jury.

The COURT. Mr. Jillard is excused. The clerk will proceed to call the talesmen, in their order, and gentlemen will be kind enough to signify their presence as their names are called.

The clerk then proceeded to read as follows:

Thomas Lewis, no response.
Matthew G. Emory, present.
William H. Harrover, present.
Daniel Breed, present.
Thomas Young, present.
James Kelley, present.
William Orme, present.
John McDermott, no response.
William Helmick, present.

Mr. HELMICK. If the court please, I ask to be excused. I have now, and always have had, conscientious scruples against capital punishment. I could not sit as a juror and do myself justice.

The COURT. I do not pass upon questions of that kind now. The clerk will proceed.

George T. McGlue, present.
James McGran, present,
George A. Bohrer, present.
Douglas Moore, present.
Christian C. Schnieder, present.
Upton H. Rodenour, present.
Isaac W. Ross, present.
George J. Scufferle, present.
Joseph Crandall, present.
Thomas E. Lloyd, present.
Walter W. Burdett, present.
Frederick Bates, no response.
Moses T. Parker, present.
Nicholas Acker, present.
John T. Mitchell, present.

Jenkin Thomas, present.

Benjamin H. Stinemetz.

THE COURT. Mr. Stinemetz I am told is confined to his bed by sickness. I have a note from his physician to that effect. He is therefore excused.

Joseph L. Pearson, present.

Mr. PEARSON. I am not a taxpayer.

Mr. BRADLEY. That settles it.

The COURT. Why are you not a taxpayer? Have you been overlooked merely?

Mr. PEARSON. I own no real estate in this city, and have never been assessed, to my knowledge, for any other tax, except the school tax which I have paid on voting.

The COURT. I do not think you have a good excuse.

William Ballantyne, present.

William Flynn, present.

William H. Lane, present.

Mr. LANE approaching the court as if desirous of addressing him privately.

Mr. MERRICK said: I will simply state to the court that on yesterday we had agreed among ourselves that the court should hear these excuses, and act as it saw proper; and that was suggested from the fact that in some cases the excuses presented by the jurors might involve matters of delicacy, which it might not be desirable to have made public, and that such should therefore be addressed solely to the court, and not made known to us, unless the court saw proper to call our attention to them.

The COURT, (after a brief conversation with Mr. Lane) I am satisfied Mr. Lane has a just excuse, and he is therefore relieved from service.

Patrick Flemming, present.

Francis Lamb, present.

The COURT. Mr. Germon Crandell, one of the jurors summoned in this case, informs me that his wife is seriously sick, and therefore asks to be excused. He is therefore excused.

William Orme, present.

The COURT. Dr. Burrows certifies that Mr. Orme is laboring under such physical disability as to render him unfit to serve as as a juror. He is excused.

The COURT. Francis Lamb hands me a certificate to the effect that his wife is very seriously ill. He is excused.

Thomas Young, whose name has been called, I have known for many years, and have known him to be an invalid. I hold in my hand a certificate from Dr. Young stating that he is unfit. He is therefore excused.

William H. Tenney, excused.

The COURT. Dr. Breed, whose name has been called, says that he has been educated a quaker, and entertains such strong scruples that he could not serve as a juror. That is not the class of questions, however, that I propose to act on.

Dr. BREED. I have still another reason, perhaps a stronger one; I have formed a very decided opinion.

The COURT. We have nothing to do with that at this time.

James Y. Davis, present.

George F. Gulick.

Mr. GULICK stated that his father-in-law had died last night, and of course he did not feel like being detained at court under those circumstances.

The COURT. We will not pass upon your case now, because the court is not going to be in session to-day.

John Grinder, present.

The COURT. John Grinder has furnished the court with a certificate that his left collar bone has been broken by being thrown from a carriage, and he is therefore unable to sit as a juror. He is excused.

John A. Markriter, present.
Columbus Alexander, present.
William H. Baldwin, present.
John W. Simms, present.
John T. Given, present.
Paulus Thyson, present.
William B. Williams, present.

The COURT. Jenkin Thomas informs the court that he is subject to attacks of inflammatory rheumatism, of which he has had two of great severity within the last two months, and that he is liable to a return of them on any very decided change in the temperature of the weather.

The DISTRICT ATTORNEY. Almost every man is liable to a disease of some kind, and I respectfully submit to your honor that that is hardly a sufficient excuse.

Mr. THOMAS. I am suffering now.

The COURT. I do not think, Mr. Thomas, that your case is such a one as would justify me in excusing you.

Norman B. Smith, no response.

The COURT. Mr. Paulus Thyson has presented me with an excuse, which I think is a sufficiently good one to justify the court in excusing him. It is rather of a private nature. He is excused.

A. B. Stoughton, present.
Peter Hepburn, present.
James S. Topham, present.

The COURT. I am informed that Mr. Topham has a little child at the point of death. He is therefore excused.

William J. Redstrake, present.
J. J. May.

The MARSHAL. He is in New York.

William McLean, present.
Thomas Maguire, present.
James C. Kennedy, present.

Mr. KENNEDY. I claim exemption on the ground that I am not a resident of the District. I pay taxes on property here, but I vote in the city of New York, and pay my personal taxes there. I claim my residence in that city.

The COURT. You are excused.

John Wilson.

Mr. WILSON. I would state, your honor, that when I am away from my place of business, it is left without any one at all to attend to it. My family are all well, sir, and, notwithstanding, I am in a very delicate state of health myself, (laughter, being a gentleman weighing about 210 pounds,) I could not get a certificate from my physician. I have no excuse to render, your honor, other than to say that I would like very much to get off on account of my business engagements.

The COURT. Judging from your appearance the court will give you exemption when you bring your doctor's certificate. (Renewed laughter.)

William H. Barbour, present.
George L. Sheriff, present.
Samuel Bacon.

The COURT. Mr. Bacon is a little unwell, and he is not certain whether he will be able to be here to-day or not. He is willing to serve if he feels well enough.

Perry W. Browning, present.

Mr. BROWNING. I will simply state that I am resident of the State of Maryland, and vote there.

The COURT. Mr. Browning is excused. I know the fact which he states.
John Alexander.
The MARSHAL. He is in New York.
George E. Jillard, excused.
William Bryan, no response.
Amos Hunt, present.
Lot Flannery, present.
Isaac W. Ross, present.

The calling of the list being completed, the court said Mr. Kelly holds the office of watchman in the Navy Department, and is therefore exempt by law. Mr. Stoughton says he has a large business in the patent line, which sitting as a juror here would materially interfere with. The court does not feel at liberty, however, to excuse him on that ground.

Mr. STOUGHTON. I will state that I cannot possibly be here.

Mr. PIERREPONT. The court will not sit to-day, and perhaps not to-morrow, and you may not be required at all. You had better let your case lie over.

The COURT.—Mr. Douglass Moore is excused on account of sickness.

Have you any propositions, gentlemen, to make in regard to the disposition of this case to-day?

Mr. BRADLEY. I wish to suggest, sir, to my brethren on the other side, that it would, perhaps, be well to have the court direct the marshal to summon as many more to-morrow as have been excused to-day.

The MARSHAL. I will explain, if the court please, that I understood the order of the court yesterday to be, that the marshal summon 100 additional jurors. In view, however, of the very limited time which we had in which to execute the order, the full complement was not made out, and I propose now, if such meet the approval of the court and the counsel, to fill up such vacancies as have occurred by gentlemen being excused, and summon the remaining number of the 100, so that the list shall be complete to-morrow morning.

The COURT. The marshal will complete the list, so that we may have 100 here to-morrow morning.

Thereupon the court adjourned till to-morrow morning at 10 o'clock.

JUNE 15, 1867.

The court met at 10 o'clock a. m. Justice Wylie on the bench.

The COURT. I will announce to the gentlemen of the bar engaged in this case that it is not my purpose to go into the trial of it, but merely to preside here to-day for the selection of a jury. I am engaged in holding the circuit court, and I suppose that one of my brethren will be here in time to go on with the trial of this cause on Monday. I have adjourned the circuit court for to-day in order that the jury may be completed in this case, and all parties thereby saved from the expense, labor, and vexation of going over again all that has been done from Monday until this time.

If the court shall adjourn to-day without completing the work, on Monday there being a new term, the case would have to be continued. For that purpose then alone is it that I have adjourned my own court to come here and assist in the conclusion of this work that has been entered upon of the selection of a jury. There is no other judge who can attend to it, and Judge Fisher is sick, and my other two brethren are absent.

The COURT excused Mr. Larmon, it being shown that he was an officer of the government, employed in the Treasury Department, as master machinist in the Currency Bureau.

The CLERK was directed to call the list of talesmen, which he proceeded to do as follows:

Thomas Lewis, no response.
John McDermott.

The MARSHAL. He has not been served. He is not in the city.

Norman B. Smith, present.

J. J. May, no response.

John Alexander, present.

The COURT. I think it would be better for those who intend to apply for exemption to make their application as their names are called.

Mr. BRADLEY. That has been done heretofore.

Mr. SMITH. May it please your honor, I don't think I am physically able for the endurance of a juryman. Besides that, I do not believe I am competent, for I have expressed an opinion relative to this case.

By the COURT:

Q. When did you express that opinion?

A. I believe I have done it repeatedly.

Q. When?

A. After the trial of the conspirators—after reading the testimony in that case.

Q. It is not enough to have expressed an opinion. Have you formed an opinion, is what I desire to know, for sometimes men express opinions that they do not believe in.

A. I believe I had formed an opinion before I expressed it.

Q. You say you formed your opinion from reading the testimony given on the trial of the conspirators?

A. Yes, sir.

The COURT. I do not think that is a sufficient excuse. I do not see how a man can form an opinion in regard to the guilt of a man in one case, by reading the evidence in another case.

WITNESS. If that is not sufficient ground to excuse me I claim it on the other; I am certainly not physically able to endure the fatigues of sitting on a jury.

The COURT. I do not believe you are. You seem to be very tremulous. You are excused.

The DISTRICT ATTORNEY. If your honor please, I was not in when your honor first appeared upon the bench, but permit me to say, sir, several difficulties occur to us upon consultation, in the way of proceeding with the cause at present. I do not know whether your honor's attention has been called to the act of Congress, which was read to Judge Fisher, providing that unless a jury is empanelled during one term of the court, we cannot continue the trial of the case during the succeeding term.

The COURT. I understand that.

Mr. BRADLEY. Is that any reason why you should not get a panel.

THE COURT. That is why I am sitting here to-day in order that we may get a jury before the next term begins.

The DISTRICT ATTORNEY. Precisely, but it occurred to us that it would be impossible for us to empanel a jury to-day. But even if we should succeed in doing so, there are other difficulties which suggest themselves to our minds, and which we deem it our duty to bring to the attention of the court. The term of the criminal court is assigned to one of the judges of the supreme court of the District of Columbia, and during the term, I believe a rule of court requires that where a judge takes the place of the one to whom the term has been assigned, it should be upon his written request. I think that is the rule of the court in such a case.

The COURT. How do you know but what I have that.

The DISTRICT ATTORNEY. I am not aware of how the fact is in this particular case. I merely suggest these difficulties because we wish to proceed in such a way that there can be no objection made hereafter to the mode of proceeding. We conceive it to be our duty to bring to the mind of the court such difficulties as may occur to us, and which your honor may have overlooked.

There is one other point, if your honor please, that I desire to call to the attention of the court. It is this, whether it would be a legal proceeding for one judge to commence the trial of the case, to decide an important question, such as has been decided during the progress of this trial, and to empanel a part of the jury; for a second judge to complete empanelling of the jury, and then for a third judge to try the case, for the reporter has read to me the announcement of your honor that it is not your purpose to try this case, but simply to go on and empannel the jury.

The COURT. Yes, that is all.

The DISTRICT ATTORNEY. If your honor were to empannel this jury, and then proceed to try the case, that might obviate the difficulty to a certain extent. The case would then be presented of one judge empanelling a part of the jury, and the other judge taking his place, in conformity with the rule of the court, and completing the empanelling of the said jury, and presiding during the entire trial; but if this case is presented with Judge Fisher deciding one important question which has been submitted to him, empanelling three of the jurors, and your honor empanelling the nine other jurors, and then of the case going to the next term, and the chief justice trying it, I doubt whether that would be a legal proceeding. At all events it is a question of such grave importance——

Mr. PIERREPONT. Three judges will then have been engaged in the trial of one case

The DISTRICT ATTORNEY. I say, sir, the question is one of such grave importance that we have felt it our duty to bring it to the attention of the court, and to submit some observations upon it.

The COURT. It is not worth while to waste any time upon points of that sort. I am not disposed to listen to argument upon such. The law knows neither Judge Olin, Judge Fisher, nor Judge Wylie, but looks to the "justice of the criminal court," and it makes no difference if all four of us are concerned on the trial at different stages of the case.

Mr. PIERREPONT. We feel it to be our duty to present to your honor the view we entertain, that under your law, three judges cannot sit in the trial of one cause, and have it legal.

The COURT. There are not three judges sitting—only one.

Mr. PIERREPONT. As I understand it, the empanelling of a jury is as much the trial of a cause as the hearing of the testimony.

Mr. BRADLEY. Are we to understand the learned counsel as holding, that if the judge be taken sick after he shall have entered upon the trial of a cause, and be unable to attend, that another judge cannot take his place.

Mr. PIERREPONT. I certainly suppose he cannot in a murder trial.

Mr. BRADLEY. He certainly can.

Mr. PIERREPONT. Not when the case runs into another term.

The COURT. Reduce your point to writing. The court overrules the objection, and, perhaps, it would be well for you to have your point fully presented on the record.

The DISTRICT ATTORNEY. I am not aware that I would accomplish anything, by reducing it to writing, because I would have no appeal. At least that is a mooted question, whether in criminal causes the government has any appeal.

The COURT. I have overruled the objection. There is no use, therefore, discussing the matter.

Mr. PIERREPONT. (In a low tone to the district attorney.) We cannot go on.

The COURT. Proceed to call the jury, Mr. Clerk.

The clerk then commenced calling over the list in the following order:

Thomas Lewis, no response.

Matthew G. Emory, present.

The COURT. I have a certificate from Mr. Emory's family physician, stating that his wife is quite sick, and requires to be removed to different air, and that Mr. Emory himself is rather indisposed, (laughter) The act of Congress makes that a good excuse. He is therefore excused.

WILLIAM HARROVER was next called, and after being duly sworn—examined on his *voire dire*, as follows:

By the COURT:

Q. Have you any reason why you should not serve upon this jury?

A. No, sir; but I would rather not. I do not like to serve on such cases.

The COURT. Gentlemen have you any questions to put to him.

Mr. BRADLEY. I thought your honor intended putting the question to him as to whether he had formed and expressed an opinion.

By the COURT. Have you formed an opinion in this case?

A. I cannot say that I have. It is impossible to tell. We have our opinions about these things.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment?

A. I do not know.

Mr. BRADLEY. He has served upon capital cases. It is hardly worth while to ask him that question.

The COURT. Mr. Harrover is a competent juror.

Mr. HARROVER. I have a certificate here.

The COURT. Let me see it. I thought you were through. (After reading the paper.) Here is a very strong medical certificate to the effect that Mr. Harrover is wholly physically incapacitated from sitting on a jury.

Mr. MERRICK. Who is the physician?

The COURT. Dr. Toner.

Mr. HARROVER. My neighbors can certify to the same.

Mr. BRADLEY. Dr. Toner is a man of character.

Mr. HARROVER. I tried to get it in yesterday, but did not succeed.

The COURT. If the facts stated in this certificate be true, he is physically incompetent.

The juror was excused.

DANIEL BREED was called, and examined upon his *voire dire*.

By the COURT:

Q. Are you physically able to sit on a jury?

A. I think I am, though I am not very well now, and was recently quite indisposed.

Q. Have you formed an opinion in this case?

A. I have.

Q. When did you form it?

A. From the first history of the murder of Lincoln. I have watched everything I have seen in the papers, and little by little have come to the conclusion and expressed an opinion long ago, in regard to the prisoner.

Q. In regard to this prisoner?

Q. Yes, sir.

The COURT. You are incompetent, and are excused.

JOHN R. ELVANS called, and after being sworn was examined upon his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in this case?

A. I have.

Q. When did you form that opinion?

A. Probably from the time of the trial of the conspirators by the military commission at the arsenal. It has been founded on the newspaper reports of that trial of course.

Q. Do you think that opinion is such as to sway or bias your mind so as to effect your judgment upon the evidence and the law as given to you by the court and witnesses?

A. So far as I can analyze my own mind, I do not think it would have any effect on my judgment in the rendition of a verdict. I believe I could render a verdict in accordance with the evidence, notwithstanding the fact that I may have formed an opinion from reading the newspapers.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. None, sir.

The COURT. I think he is a competent juryman. Have you any questions to ask, gentlemen?

The DISTRICT ATTORNEY. If you honor please, having upon consultation entertained some doubt as to the legality of the present mode of proceeding, we have thought it best to reduce our proposition to writing, in order that hereafter we may take some advantage of it, if necessary, and then have the matter more materially considered, either by the judge who does preside, or by the court in *banc*.

I will now, with the permission of your honor, proceed to read the paper. It was then read, as follows:

"JUNE 15, 1867.

"The district attorney, on the part of the United States, objects to any proceeding to empannel a jury, on the ground that this term ends on Monday next, June 17, 1867; that the judge, to wit, Judge Fisher, assigned to hold the present term, is sick, and not present; that he was present on Thursday last; that another judge, to wit, Judge Cartter, is assigned to the next term of this criminal court, and that as the commencement of the empannelling of the jury was by Judge Fisher, it is submitted by the district attorney to be illegal to proceed before Judge Wylie, to complete the empannelling of the jury in this case.

"EDWARD M. CARRINGTON,
"*U. S. Attorney for District of Columbia.*"

The COURT. The objection is overruled. You except of course.

The DISTRICT ATTORNEY. Yes, sir. We desire to have the paper filed.

Mr. BRADLEY. (To the district attorney.) Do you challenge Mr. Elvans?

The DISTRICT ATTORNEY. No, sir.

Mr. BRADLEY. We do.

THOMAS BLAGDEN was called, and after being duly sworn was examined upon his *voire dire*.

By the COURT:

Q. Have you formed an opinion in this case?

A. I have. I have formed an opinion, and expressed it the other day?

Q. When did you form that opinion.

A. During the progress of the trial of the assassins. I cannot specify exactly the time. I read attentively all the evidence that was given.

Q. You formed it from newspaper reports of the evidence of that trial?

A. Yes, sir.

Q. Do you suppose that your bias is so strong in consequence of that opinion that you could not do justice to the prisoner, or to the United States?

A. I do.

The COURT. You are excused.

RILEY A. SHINN was called, and after being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion?

Mr. SHINN. Your honor, I wish to state that I suffer a great deal with a disease, which I have had for years, and which would be rendered much worse by sitting as long as I would have to, were I required to serve on this jury. I mentioned the fact to Judge Fisher the other day, and would have come prepared with a certificate from my physician, had I supposed there would be a session of the court to-day. If the case were expected to occupy only a few days, I would have no objection at all; but it would be impossible for me to sit on a protracted case like this promises to be. Some time ago, while serving on the grand jury, I was compelled to get a leave of absence from Judge Fisher for some fifteen days, in consequence of this complaint.

Q. Is it a chronic complaint?

A. Yes, sir.

Q. Did it disable you at that time?

A. Yes, sir. Sitting any length of time has the effect to aggravate the disease, and render me very uncomfortable. Walking does not effect me at all; but it frequently happens that I am not able to ride for a week or two. Some times I am unable to lie in my bed, and have to sleep in a reclining chair.

The COURT. You are excused.

RICHARD M. HALL was called, but not responding, his name was passed.

JOHN VAN RESWICK was called, and after being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in this case.

A. I have not, nor expressed any that I am aware of.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment?

A. I have not.

The COURT. I do not observe any physical disability, and I think him, therefore a competent juror.

The DISTRICT ATTORNEY. We asked Mr. Van Reswick a question the other day.

The COURT. Well.

Mr. PIERREPONT. The case stands in this peculiar position, your honor. This same juror was upon the stand the other day, and a certain question was asked him, to which objection being made, the court concluded to hold the matter over and let the juror retire for the time being. I may state, in this connection, that the question was argued at great length by counsel on both sides.

The COURT. What was the question?

Mr. PIERREPONT. Has your honor read the indictment, allow me to ask, in order that I may make myself intelligible.

The COURT. I heard it read; I was present when the prisoner was arraigned.

Mr. PIERREPONT. The indictment, as your honor will perceive, in the third and fourth counts charges this prisoner with being engaged in a conspiracy with certain other persons named; it follows, therefore, that if the other persons with whom he is charged with being engaged in a conspiracy, were themselves innocent of any conspiracy, why of course this party is innocent, because he cannot conspire alone. The question which had been put to the witness, and which was held under advisement by Judge Fisher, was as to whether we could properly ask the witness whether he had formed and expressed an opinion regarding the guilt or innocence of the other conspirators named in the indictment.

Mr Bradley. And the principal objection to which was, that they did not ask him whether he had formed or expressed an opinion as to the complicity of the prisoner with the parties charged with that conspiracy, or stated any opinion as to his connection with them in any shape, but as to people entirely outside of him.

Mr. Pierrepont. It came up on a single question; the whole substance of the thing was debated, and of course the determination of that question would determine the other questions which were to be asked of this witness.

The Court. I remember observing something about this question being raised in the published reports.

Mr. Pierrepont. If the court should say that any opinion formed in relation to the guilt or innocence of the co-conspirators disqualified the juror, why then of course he could not sit any more than if he had expressed it in relation to the accused himself. Under these two counts of the indictment, if the other parties were not conspirators, why then this man was not a conspirator, for no man can conspire alone; hence I say it being a material averment in the indictment that he is guilty as a co-conspirator, it becomes in our judgment a matter of very great importance to know whether this juror has made up his mind in relation to the innocence of the other conspirators charged with this crime; if so, he has so made up his mind on the subject as will necessarily acquit the prisoner.

Mr. Bradley. I thought the gentlemen had determined to abandon the case.

Mr. Pierrepont. We are determined to file our objection, and have done so.

Mr. Bradley. We do not propose, sir, to discuss any of these questions relating to the qualifications of jurors, but simply to submit them for your honors decision, without argument, so far as we are concerned.

The Court. I called over to see Judge Fisher last night, and this question was mentioned by him. We both concurred in the opinion that the objection raised to the competency of the juror was not a valid objection, and he would have so ruled had he been able to have come into court this morning.

Mr. Pierrepont. If your honor please, I do not know exactly what the custom here is, in relation to the trying of jurors before the court, in place of triers, as the statute provides. The learned district attorney and the learned counsel on the other side, seem to entertain different views as to the custom. I will only say, sir, that by the statute of 1862, as well as at common law, these were proper questions to be asked of the juror, in order to discover whether he was competent on various grounds

Mr. Bradley. Will my brother permit me to ask him what question there is before the court?

Mr. Pierrepont. I want to see whether I will be permitted to ask any questions.

The Court. I have overruled your objection, you will understand.

Mr. Pierrepont. Yes, sir; I understand that. What I am now desirous of ascertaining is, whether other questions going to the competency of the juror, are in your honor's judgment, proper to be asked of the jurors. My learned friend the other day suggested that it was not customary to examine, or to cross-examine a juror. I do not see how we are otherwise to get at his competency.

The Court. This juror is now being examined by the court on his *voire dire*. If counsel ask questions it is only by permission of the court. The court will grant you that permission, if you have any other questions, reserving to itself, of course, the right to decide upon the competency of the questions asked.

Mr. Pierrepont. Of course. I see the statute provides certain qualifications in order to make a juror, and with the permission of your honor, I will now proceed to ask him with regard to such.

The Court. Very well, sir.

Q. You are a citizen, I suppose?

A. Yes, sir.

Q. Born in this country?
A. Yes, sir; a native of Washington.
Q. I presume you pay taxes?
A. Yes, sir.
Q. Have you been living in Washington the whole time since the assassination?
A. O, yes, sir.
Q. Have you read the evidence connected with the trial of the conspirators, or much of it.
A. I read some of it, perhaps all, I am not sure.
Q. And you formed no opinion as to the guilt of the prisoner?
A. No, sir; none at all.
Q. And you did not express any?
A. No, sir.
Q. And have not any now formed in your mind, one way or the other?
A. I have not.

Mr. PIERREPONT. I will now put to you a question which I do not wish you to answer unless the court shall decide it competent. I presume it will be overruled, but I put it simply for the purpose of preserving the point.

Q. Have you formed and expressed an opinion touching the guilt or innocence of those who are charged in this indictment as conspirators with the accused.

Mr. BRADLEY. Do not answer.

The COURT. I have just overruled that question.

Mr. PIERREPONT. I so understood your honor, but I was desirous of having the point spread out on the record.

Mr. BRADLEY. It was on the record before.

Mr. MERRICK. I understand that every thing that is said goes upon the record. The reporters, I believe, take down every thing that is said and done.

The COURT. What the reporters take down does not constitute the official record of the court.

Mr. MERRICK. Not the record usually made by the clerk I am aware, sir.

By Mr. PIERREPONT:

Q. Do you know what the charge is for which the party is arrested here?
A. I think I have understood it.
Q. What have you understood it to be?
A. I understand that he is indicted for murder; being engaged in a conspiracy with other parties to commit murder.
Q. On neither you have formed an opinion?
A. On neither.

Challenged by the district attorney.

JOSEPH T. BROWN was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in this case?
A. I have.
Q. When did you form this opinion?
A. About the time of the trial of the conspirators. I also formed that opinion about the time of the arrival of Mr. Surratt, I believe, having then re-read the testimony in the conspiracy trial.
Q. Is the bias which you have received from reading that testimony on your mind so strong as would interfere with your impartial discharge of your duty as a juryman upon the evidence given to you in the cause, and upon the law as given by the court?
A. I think it would; at least I would be afraid to trust it.

Excused.

THOMAS BERRY was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner?

A. I have.

Q. How, and in what way did you form this opinion?

A. From reading the statement of his arrest, and a portion of the proceedings on the trial of the other conspirators.

Q. Is the bias on your mind so strong as to prevent you doing impartial justice between the United States and the prisoner?

A. No, sir.

Q. Do you think you could decide it fairly?

A. Yes, sir; according to the law and the evidence.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment.

A. No, sir.

The COURT. Gentlemen, he is a competent juror.

Mr. BERRY. Permit me to say, your honor, that I am not in very good health, and therefore do not know as I would be able to serve.

The COURT. Have you a doctor's certificate?

Mr. BERRY. No, sir.

The COURT. The presumption then is that you are able to serve.

Mr. Berry being accepted by counsel on either side was sworn in by the clerk.

JOHN H. CRANE was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have your formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form this opinion?

A I formed the opinion from reading the report of the assassination trial two years ago, and from circumstances connected with the case.

Q. Is the bias on your mind so strong as to disable you from rendering an impartial verdict between the United States and the prisoner?

A. No, sir.

Q Do you believe you could decide according to the law and the evidence in the case?

A. I think I could.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment?

A. I am opposed to capital punishment.

Q. But so long as capital punishment is lawful by the laws of the land, would that disapprobation on your part influence you in rendering a verdict?

A. It would not.

The COURT. He is competent.

Challenged by the prisoner.

WILLIAM HELMICK was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have formed, and expressed frequently, an opinion in reference to this case.

Q. In what way have you formed that opinion?

A. From reading the proceedings on the trial of the conspirators some two years ago.

Q. Is that opinion so decided as to bias your mind in determining between the United States and the prisoner at the bar?

A. No, sir; I do not think that a person should form such an opinion as would force him to a decision contrary to the law and the testimony that should be presented. If I were otherwise competent, I could not consider myself incompetent on that ground.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. I do, and always have. Many years ago I favored the passage of a law in my State to abolish capital punishment in the State entirely. My opinion is very decided on it.

Q. But as capital punishment is lawful by the laws of the land, do you think you would have anything to do with that as a juror?

A. I should very much regret to have to take an oath to decide a case of the kind. With my present views on that subject I do not think I would be competent to decide. My prejudices against capital punishment have always been such that I do not feel as if I could sit as a juror in a case of murder.

The COURT. You are excused.

GEORGE T. MCGLUE was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. By reading, and from rumor.

Q. Is that opinion so decided as to affect your impartiality as a juror, in case you should be sworn, in weighing the evidence?

A. If it had not been for circumstances I think it would have been, but my opinion, from circumstances, has been changed.

Q. So you have a double opinion on the subject?

A. I say my opinion has been changed from circumstances transpiring in regard to the rebellion.

Q. What I want to get at is this: whether you could do impartial justice between the government and the prisoner at the bar, according to the law and the evidence?

A. I would rather be afraid to trust myself.

Q. Do you believe though, you could decide fairly and impartially upon the law and the evidence in the cause, notwithstanding those former opinions which you may have entertained?

A. I might do so, and then again my feelings are of such a character that I might not be able to.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

The COURT. He is a competent juror.

Challenged by the prisoner.

JAMES MCGRAN was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. By what means did you form that opinion?

A. By reading, and hearing conversations in regard to the matter.

Q. Is that opinion so strong in your mind that it would affect your verdict as a juryman?

A. I think it would.

Q. Do you think it would bias you as to your verdict upon the law and evidence that you might receive in this case?

A. I think that it would have a tendency to do so.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

Mr. McGran was declared to be a competent juror.

Challenged by the district attorney.

GEORGE A. BOHRER was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I should like first to hear the names of the conspirators read before I answer the question. I understand that he is indicted jointly with others.

The COURT. No, sir, he is not indicted with others.

Mr. BOHRER. But indicted for acting jointly with others, as I understand.

The COURT. No, sir; he is indicted for murder; the result of a conspiracy with others.

Mr. BOHRER. I have formed and expressed an opinion in regard to the conspiracy trials that have heretofore been had.

Q. In what way did you form that opinion?

A. From reading the newspaper reports of the evidence taken on the trial of the conspirators.

Q. Is this bias on your mind so strong as to disturb the impartiality of your mind in weighing the evidence on the trial in this case?

A. No, sir.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. Probably I can convey a better idea to your honor before answering that, by saying that I expressed this opinion in regard to this matter from the evidence.

Q. You will please answer the question I have just asked.

A. I have not.

I desire to say with regard to the first questions put to me, that I have said that I could not have convicted Mrs. Surratt on the evidence adduced before the commission. I think it is due to the court, to the public, and to myself to make this statement.

The COURT. That has nothing to do with this case. We are not inquiring here as to the guilt or innocence of Mrs. Surratt.

THE COURT. Mr. Bohrer is a competent juror in the opinion of the court.

Mr. Bohrer was accepted and sworn.

CHRISTIAN C. SCHNEIDER was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. In what way did you form that opinion?

A. From the papers and from the evidence given on the trial of the conspirators.

Q. Is that opinion on you mind so strong as to render your incapable of deciding according to the law and the evidence in this case?

A. No, sir.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

The COURT. Mr. Schneider is a competent juror.

He was then accepted and sworn.

UPTON H. RIDENOUR was called, and being duly sworn was examined as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From reading the evidence given on the trial of the conspirators.

Q. Do you feel that you have such a bias on your mind as to render you uncapable of rendering an impartial verdict between the United States and the prisoner at the bar?

A. I would have considerable to overcome before I could do it. I have streng prejudices.

The COURT. That is not an answer to my question.

My question is whether you feel that you have such a bias on your mind as to render you incapable to decide upon the law and evidence in the case?

A. I think I do.

The COURT. You are excused.

ISAAC W. ROSS was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. No, sir.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

The COURT. He is competent.

Mr. BRADLEY. Mr. Ross is very infirm in health, being affected with paralysis, and I think it would be impossible for him to sit upon a jury when the trial will be as long and tedious as this promises to be.

The COURT. How is that Mr. Ross?

Mr. Ross. I guess there would be no difficulty about that. I do not apprehend any.

Challenged by the prisoner.

GEORGE A. SUEFFERLE was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. How?

A. From newspaper reports of the proceedings of the trial of the conspirators.

Q. Is your mind so biased as to render you incapable of deciding impartially on the law and the evidence?

A. I think not.

Q. Do you entertain any conscientious convictions in regard to the lawfulness of capital punishment.

A. None at all.

By the DISTRICT ATTORNEY:

Q. Were you on the last grand jury?

A. No, sir; I think I was on the grand jury in 1864.

Q. You were not on the grand jury that found this bill of indictment?

A. No, sir.

Challenged by the district attorney.

THOMAS E. LLOYD was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. I formed the opinion by reading the proceedings on the trial of the conspirators before the military commission and subsequently.

Q. Is that opinion so strong as to affect your impartiality on the trial between the United States and the prisoner at the bar?

A. As far as I can analyze my own mind, I believe I would not be a competent juror.

Q. You think you would be controlled in some measure by that bias?

A. I think so.

The COURT. You are excused.

WALTER W. BURDETTE was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From what I have heard and read.

Q. Is your mind so settled in that conviction as to prevent you from rendering an impartial verdict according to the law and the evidence, between the prisoner at the bar and the United States?

A. I believe I could come to a just conclusion in the case.

Q. Do you entertain any conscientious convictions in regard to the lawfulness of capital punishment?

A. For many years I have been opposed to capital punishment, or the penalty of death for any crime.

Q. Would that prevent your rendering a verdict according to the law and the evidence?

A. It would, where I believed the sentence would be capital punishment.

The COURT. You are excused.

FREDERICK BATES was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. In what way did you form it?

A. From attendance on the trial of the conspirators, and from reading the reports in the newspapers.

Q. Is that opinion so strong as to bias your mind and affect your impartiality as a juror, between the United States and the prisoner at the bar?

A. I think it would be.

The COURT. You are excused.

MOSES T. PARKER was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar.

A. At the early incipiency I did.

Q. How did you then make up your opinion?

A. Merely from the floating ideas and opinions at that time.

Q. Do you feel as if that opinion is so strong as to render you incapable of rendering an impartial verdict between the United States and the prisoner at the bar, upon the law and the evidence?

A. I have never thought that an opinion entertained by me would prevent me rendering a verdict according to the law and the evidence.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. No, sir.

The COURT. He is a competent juror.

Challenged by the prisoner.

NICHOLAS ACKER was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. As far back as the conspiracy trials. I read the book on it.

Q. Is that opinion so strong as to affect your impartiality as a juror in the trial between the United States and the prisoner at the bar?

A. I do not know that it would on the evidence.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. No, sir.

The COURT. He is a competent juror.

By Mr. PIERREPONT:

Q. You are an American citizen, are you not?

A. Partly so and partly not. (Laughter.) I was born in Germany.

Q. You have been made a citizen?

A. O, yes, sir. I will state, however, that I cannot very well serve as a juror because I am not in good health, as you will see by that note.

The COURT, (after reading the note referred to by Mr. Acker.) He is afflicted with rather a curious disease. Dr. Garnett certifies that he is at present under his professional care; that he is troubled with a disease of the stomach, which produces at intervals sudden rushings of blood to the brain, educing attacks of somnolency, which are irresistible, and oblige him for the moment to go to sleep.

Mr. BRADLEY. Were you not discharged from a jury in the civil court on that account?

A. Yes, sir, pretty much on that account; I told the judge how I was afflicted.

The COURT. Mr. Acker, you are excused; it won't do to go to sleep on this trial.

Dr. J. L. KIDWELL was called, and being duly sworn was examined upon his *voire dire*, as follows:

By the COURT:

Q. I understand, Mr. Kidwell, that you have some special claims for exemption?

A. I have three letters from physicians in my immediate neighborhood stating that my services are indispensable in my store at this time. I will state that I have no one in my store at present but a couple of boys, both of my clerks being sick with the typhoid fever—one of them very ill.

The COURT. You are excused.

JOHN T. MITCHELL was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. I formed my opinion from reading the testimony before the court that tried the other parties. Also, by being thrown in contact with one of the witnesses before that court, while travelling. We had a conversation that lasted a considerable length of time. What he said made a very serious impression on my mind.

Q. Do you think this impression on your mind is such as would render you incapable of deciding impartially upon the law and the evidence which may be elicited in the case?

A. If I have ever conscientiously endeavored to come to a conclusion in regard to a matter, I have in this particular case. If sworn as a juror I would strive to do my duty both to the prisoner and the United States, but I should be afraid, that under the circumstances, with the impressions that have been made upon my mind, that it would be a lifelong regret with me if I should be compelled to serve.

The COURT. You are excused.

JENKINS THOMAS was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

Mr. THOMAS. Will your honor allow me to call your attention to the certificate that I have laid on your desk? You will see by that that I am physically incompetent.

The COURT. Dr. Magruder certifies that Mr. Thomas is subject to violent attacks of inflammatory rheumatism, and that a change of atmosphere is always likely to produce them. I think it better to excuse you, Mr. Thomas.

JOSEPH L. PEARSON was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. The reading of the evidence taken on the trial of the conspirators, and the events which have since taken place, leave an impression on my mind of the guilt of the prisoner.

Q. Is that impression so strong as to render you incapable of deciding impartially upon the law and the evidence in the case?

A. No, sir.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. I am only opposed to capital punishment when conviction is had on circumstantial evidence.

Q. You are not opposed to capital punishment if the case is made out?

A. No, sir; not positively.

By Mr. BRADLEY:

Q. Are you a taxpayer?

A. I never paid any taxes other than the school tax.

The COURT. He is a resident here.

Mr. BRADLEY. There is no school tax now, but he says that he has paid a school tax heretofore.

The COURT. Is the payment of taxes required now in order to render a man a competent juror?

Mr. BRADLEY. Yes, sir; he must be a taxpayer.

The DISTRICT ATTORNEY. Have you not paid the school tax?

Mr. PEARSON. I have paid the school tax heretofore; I have never been assessed to my knowledge.

The COURT. I suppose the word "taxpayer" means a man who is liable to pay taxes, whether he has paid them or not.

Q. Are you a housekeeper?

A. Yes, sir.

Q. And liable to pay taxes?

A. Yes, sir.

The COURT. I think he is a competent juror.

Mr. MERRICK. We beg leave to except to the ruling of your honor in view of the answer that he gave as to whether he had formed an opinion. Desiring to have this exception reserved, we challenge him.

WILLIAM BALLANTYNE was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way have you formed that opinion?

A. From reading the testimony and from listening to the charge of the judge who conducted the prosecution.

Q. Is your mind now under such a bias as to render you incapable of deciding impartially between the United States and the prisoner at the bar, in case you should be empannelled as a juror in this case?

A. I think not.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. I have not.

The COURT. He is a competent juror.

Challenged by the prisoner.

WILLIAM FLINN was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

Mr. FLINN. I beg the court to excuse me; I have a very sick child at home.

The COURT. I think that is a good ground for excusing a person from service here. You are excused.

PATRICK FLEMING was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From the evidence, from newspaper reports of it, and from conversations.

Q. Are you, in your own judgment, incapable of deciding impartially between the United States and the prisoner at the bar?

A. I think so, decidedly.

The COURT. You are excused.

JAMES Y. DAVIS was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have not.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

The COURT. He is competent.

Mr. Davis was then accepted and sworn.

JOHN MARKRITER was called and duly sworn.

The COURT. Dr. Riley certifies that Mr. Markriter is under his medical care, and that he is wholly unfit to sit on the jury. He is therefore excused

COLUMBUS ALEXANDER was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

Q. From reading the testimony in the conspiracy trials.

Q. Do you think your mind is so biased as to render you incapable at this time of deciding impartially in this case between the United States and the prisoner at the bar?

A. I should decide the case according to the law and the evidence.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. I do not know that I have any conscientious scruples about the matter, but I am opposed to capital punishment.

Q. As a political question?

A. Yes, sir.

The COURT. He is a competent juror.

Accepted and sworn.

WILLIAM H. BALDWIN was called, and being duly sworn was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way have you formed it?

A. From reading the evidence of the trial at the arsenal.

Q. Do you feel yourself under such a bias at this time as to render you incapable of deciding impartially between the United States and the prisoner at the bar upon the evidence in the case?

A. I do.

The COURT. You are excused.

JOHN H. SIMMS was called, and being duly sworn, was examined upon his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I have not.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. I do.

Q. Is that such a conviction as would render you incapable of rendering a verdict according to the law and the evidence?

A. I think it would.

The COURT. You are excused.

JOHN T. GIVENS was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I presume I did do so, in common with others, when this case was on trial some two years ago.

Q. Is the bias you received from that trial so strong as to render you incapable of deciding impartially at this time between the United States and the prisoner at the bar?

A. I do not know that it would be.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. None whatever.

The COURT. He is competent.

Challenged by the prisoner.

WASHINGTON B. WILLIAMS was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From reading the papers, and conversing with the prisoner's friends and acquaintances.

Q. Is that bias so strong as to render you incapable of deciding impartially upon the evidence?

A. It is.

The COURT. You are excused.

A. B. STOUGHTON was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. Mainly from reading the record of the trial of the conspirators.

Q. Is that opinion such as would render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. I think it would.

The COURT. You are excused.

PETER HEPBURN was called, and being duly sworn, was examined on his *voire dire* as follows:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way have you formed it?

A. By reading the proceedings of the conspiracy trial.

Q. Is the bias upon your mind so strong as to render you incapable at this time of deciding impartially upon the evidence?

A. It is.

The COURT. You are excused.

WM. J. REDSTRAKE was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. By reading the reports of the former trial—the conspiracy trial.

Q. Is your mind so strongly biased as to render you incapable of deciding impartially upon the evidence in this case?

A. I think it is.

The COURT. You are excused.

WILLIAM MCLEAN was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I did at the time of the trial of the conspirators.

Q. Is the bias left on your mind at this time so strong as to render you incapable of deciding impartially according to the law and the evidence in this case?

A. I do not think it is.

Q. Have you any conscientious convictions against the lawfulness of capital punishment.

A. No, sir.

JAMES MCGUIRE was called, and being duly sworn was examined as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have read the testimony given on the trial of the conspirators. I was in New York at the time, and I formed an opinion at that time.

Q. Did it leave such a bias on your mind as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. I believe not.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. I do not.

The COURT. He is a competent juror.

By Mr. PIERREPONT:

Q. Mr. McGuire, do you pay taxes?

A. I do. I would say to the court, however, that I am a Catholic, and I saw in the New York Herald that the United States had taken exception to Catholics being on the jury.

The DISTRICT ATTORNEY. I hope, Mr. McGuire, you will not hold us responsible for what appears in the public newspapers?

Mr. MCGUIRE. I would rather not serve, for the reason stated.

The DISTRICT ATTORNEY. I think it is very wrong for the newspapers to publish such statements.

The COURT. If the newspapers say so it is to be presumed that the contrary is the fact.

Challenged by the district attorney.

JOHN WILSON was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. From reading the proceedings had at the trial of the conspirators.

Q. Is that bias on your mind so strong as to render you at this time incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. It has rendered me altogether one-sided, your honor.

The COURT. You are excused.

WILLIAM H. BARBOUR was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. By the developments of the trial of the conspirators at the arsenal.

Q. Are you under such a bias now as to be incapable of deciding according to the law and the evidence in this case, between the United States and the prisoner at the bar?

A. No, sir.

Q. You think you are capable?

A. Yes, sir.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. I do. I have been refused service on the jury over and over again on that account.

The COURT. You are excused.

GEORGE T. SHERIFF was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From the evidence.

Q. Are you incapable of deciding impartially between the United States and the prisoner at the bar, on the evidence that might be brought before you in this case?

A. The evidence would have to be very explicit to change my views.

Q. Do you believe that you could not weigh the evidence impartially between the government and the prisoner?

A. I think I could provided it was explicit enough.

Q. What I want to know is this: whether, in weighing the evidence, your mind could do justice to both sides?

A. It would have to be more explicit on one side than the other.

The COURT. I see you are biased. You are excused.

SAMUEL BACON was next called, but it being announced that he was confined to his house by sickness, his name was passed.

JOHN ALEXANDER was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From the testimony given on the conspiracy trials.

Q. Is the bias on your mind so strong as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. Yes, sir.

The COURT. You are excused.

WILLIAM BRYAN was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From reading the evidence in the conspiracy trial.

Q. Is that bias so strong upon your mind as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. I think it is.
Excused.

LOT FLANNERY was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. In what way?
A. From being present at the military trial.
Q. Is that bias so strong as to render you incapable of deciding impartially at this time?
A. It is, most undoubtedly.
Excused.

PATRICK WHITE was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. Yes, sir.
Q. How have you formed it?
A. From the testimony given on the trial of the conspirators.
Q. Is that bias so strong as to render you incapable of rendering an impartial verdict in this case between the United States and the prisoner at the bar?
A. It is.
Excused.

WILLIAM J. MURTAGH being called, was sworn and examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. In what way?
A. From reading the testimony before the military commission.
Q. Is your mind so biased as to render you incapable of rendering an impartial verdict according to the law and the evidence?
A. No, sir.
Q. Have you any conscientious convictions against the lawfulness of capital punishment?
A. None whatever.
The COURT. He is competent.
Mr. MURTAGH. I desire to state that I am a United States salaried officer, and am, therefore, I presume, exempt under the law.
The COURT. Yes, if that is the case you are excused.

CHARLES H. ARMES was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have not.
Q. Have you any conscientious scruples against the lawfulness of capital punishment?
A. No, sir.
Mr. BRADLEY. Are you a tax payer?
A. Yes, sir.
Challenged by the prisoner.

JAMES M. LATTA was called.

The COURT. Dr. Johnson certifies that Mr. Latta has been confined to his house yesterday by sickness, and is not able to be out.

JAMES SMALL was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar in this case?
A. I have not.
Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?
A. I do not. I wish to state, your honor, that I am not a tax-payer—that I am not the holder of any real estate.
Q. Do you keep house?
A. Yes, sir; I am a householder.
The COURT. You are competent.
Challenged by the prisoner.

JONATHAN KIRKWOOD was called, and being duly sworn, was examined on his *voire dire*, as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner?
A. I have.
Q. In what way?
A. From the reports published of the proceedings in the conspiracy trial.
Q. Is that bias on your mind so strong as to render you incapable of deciding impartially on the evidence?
A. No, sir.
Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?
A. I do not.
Challenged by the district attorney.
[This challenge exhausted the number allowed to the United States, they being allowed five and the prisoner twenty.]

AMOS HUNT was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. How old are you?
A. I will be 64 years old the 15th day of August.
Q. Have you expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. No, sir; I know nothing about it.

Q. Do you entertain any conscientious convictions in regard to capital punishment?

A. No, sir.

Challenged by the prisoner.

JACOB RAMSBERG was called, and, being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Nothing more than impression—not an opinion.

Q. Is that impression on your mind such as to render you incapable of rendering an impartial verdict?

A. I think not.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. I have not.

Challenged by the prisoner.

GEORGE CLENDENIN was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. Unfavorable to the prisoner.

Q. What I meant was how you formed it?

A. From the evidence.

Q. Is that impression or opinion of yours such as to render you incapable of deciding impartially from the evidence?

A. No, sir.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. No, sir. I would say, sir, I would like to be excused on account of the business in my office. Mr. Middleton knows what my duties are; I am in charge of the office at Glenwood Cemetery, and have to be there 365 days in the year. My son, who assists me, is a witness on this trial.

The COURT. That is necessary work, and entitles you to an excuse. You are, therefore, relieved from attendance here.

BENJAMIN F. MORSELL was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form it?

A. I formed such an opinion as I suppose every man in the community has who reads and thinks. I formed this opinion from reading and reflecting upon the evidence given on the trial of the conspirators.

Q. Does that amount to such a bias on your mind as to render you incapable of an impartial verdict between the United States and the prisoner at the bar?
A. No, sir.
Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?
A. None at all.
Accepted and sworn.

JOHN W. WRAY was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. How have you formed that opinion?
A. From the newspaper reports of the trial of the conspirators.
Q. Does that opinion amount to such a bias as to render you incapable of doing impartial justice between the United States and the prisoner at the bar?
A. Yes, sir.
Excused.

JOHN MARBURY, JR., was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. The impression was made on my mind at the time of the trial, and from his going away.
Q. Does that impression amount to such a bias of your mind as to render you incapable of deciding impartially according to the law and the evidence?
A. I think not.
Q. Have you any conscientious scruples against the lawfulness of capital punishment?
A. I have not.
Challenged by the prisoner.

EPHRAIM K. WHEELER was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner?
A. Yes, sir.
Q. How have you formed that opinion?
A. From the newspaper reports of the conspiracy trial.
Q. Does that opinion amount to such a bias of your mind as to render you incapable of doing impartial justice between the United States and the prisoner at the bar?
A. I do not think it would.
Q. Have you any conscientious convictions against the lawfulness of capital punishment?
A. No, sir.
The COURT. He is a competent juror.
Challenged by the prisoner.

C. M. SIOUSSA was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. How did you form that opinion?
A. From the evidence on the trial of the conspirators.
Q. Does that opinion amount now to such a bias as to render you incapable of deciding impartially between the United States and the prisoner at the bar?
A. It does.
Excused.

BENJAMIN SWARMY was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. How did you form that opinion?
A. From reading the evidence on the conspiracy trial.
Q. Does that opinion so bias your mind at this time as to render you incapas ble of weighing impartially the evidence on this trial between the United State- and the prisoner at the bar?
A. It would require a great deal of evidence to remove it.
Q. You think it would require more evidence on one side than it would on the other?
A. Yes, sir.
Excused.

ADAM GADDIS, Jr., was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. How did you form that opinion?
A. From what I read of the evidence given on the conspiracy trial.
Q. Is that bias on your mind so strong at this time as to render you incapable of giving an impartial verdict between the United States and the prisoner at the bar?
A. I think not. I think I could decide according to the evidence and the law.
Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?
A. I do not.

By Mr. BRADLEY:

Q. Is not your store on the road leading down to the Navy Yard bridge?
A. Yes, sir.
Q. Is it not a great place of resort for persons who live across the Eastern branch?
A. Yes, sir.
Q. Has not this subject been greatly discussed in your store and in your hearing?

A. Yes, sir.

Q. And does that, together with what you have read, form the ground of your opinion?

A. Yes, sir.

Q. Have you not had conversations with persons who were witnesses on that trial?

A. Yes, sir.

Q. And did such conversations assist in forming your judgment?

A. I do not know that they did.

Q. You have had conversations with witnesses on that trial, and how far they have affected your judgment you do not know?

A. I do not know particularly how far they have affected my judgment.

Mr. BRADLEY. I submit that he is not a competent juror.

The COURT. He says there is no such bias on his mind as would render him incapable of deciding impartially according to the law and the evidence.

Mr. BRADLEY. In ordinary cases I would have the utmost confidence in him, for I have known Mr. Gaddis all his life.

The COURT. I think he is a competent juror.

Challenged by the prisoner.

THOMAS E. CLARK was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. Did you form that opinion from the evidence elicited at the trial by the military commission?

A. Yes, sir.

Q. Have you such a bias on your mind at this time as to render you incapable of deciding impartially between the prisoner at the bar and the United States on the evidence that might be brought before you?

A. I feel that I have.

Excused.

WILLIAM LORD was called, and being duly sworn was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. By reading the newspapers?

A. Nothing further.

Q. Is it such a bias on your mind as to render you incapable of impartially deciding upon a verdict?

A. I think not.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. None whatever.

Challenged by the prisoner.

HORATIO BROWNING being called,

The COURT said: Dr. Stone sends me a certificate certifying that Mr. Browning has been under his professional charge for many years past, and that the

nature of his complaint is such as to render him wholly unfit to sit on any jury trial.

Excused.

BENJAMIN E. GITTINGS was called, and being sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

Mr. GITTINGS. May it please your honor I have been summoned on the next grand jury.

The COURT. I think this case takes priority of the grand jury.

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Partially so, from the evidence I read in the papers of the trial that took place down at the arsenal.

Q. Are you conscious of such a bias on your mind at this time as to render you incapable of coming to an impartial verdict according to the law and the evidence between the United States and the prisoner at the bar?

A. No, sir.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A Not a bit, sir.

The COURT. He is a competent juror.

Mr. GITTINGS. I hope the judge will excuse me. I am the only male about my store, and I have to open and close it every morning and evening.

Mr. MERRICK. I would simply say to your honor that Mr. Gittings has one of the most enterprising wives in the city of Washington.

Mr. GITTINGS, (good-humoredly) I hope that will have no weight with the honorable court.

The COURT. Mr. Gittings, this is a case in which the court feels justified in appealing to the public spirit of the city. Citizens must make some personal sacrifices for the public interest.

Mr. GITTINGS. There are so many others here who can serve without any great inconvenience to their business, that I hope your honor will consent to excuse me.

The COURT. I would be glad to do so, but you are so well qualified as a juryman that I do not feel justified in doing so. There is no citizen who has not his private affairs to attend to. A man who has no business is not fit to be a juryman. I hope you will be able to make such an arrangement as will save you from any loss.

Accepted and sworn

WILLIAM M. GALT was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner?

A. I have.

Q. I suppose from the newspaper reports of the trial of the conspirators?

A. Yes, sir.

Q. Are you conscious of such a bias on your mind at this time as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. I think I have not.
Challenged by the prisoner.

N. CLEARY MCKNEW was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have not.
Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?
A. I do not.
The COURT. He is competent.
Challenged by the prisoner.

LEMUEL TOWERS was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner?
A. I have.
Q. How?
A. From the proceedings of the trial of the conspirators, and from conversations with officers on the trial.
Q. Have you such a bias on your mind as to render you incapable of deciding impartially from the evidence between the United States and the prisoner at the bar?
A. I have no such bias. I believe I could give him a fair trial.
Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?
A. No sir.

By Mr. BRADLEY:

Q. How is your health?
A. I am suffering a great deal with rheumatism. I will say here that I can bring a surgeon's certificate that my health is such as not to admit of my sitting on a jury.
Q. Do you feel capable of going through a protracted trial? Is your health such as to enable you to do so?
A. I think not.
Excused.

GEORGE T. LANGLEY was called.

The COURT. Dr. Howard certifies that Mr. Langley's health is such as to render it unsafe for him to sit as a juror. I take it the doctor's certificate is true, although I must say Mr. Langley's appearance does not indicate it.
Mr. LANGLEY. I am a little flush just now.

GILBERT M. WIGHT was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner?

A. I have.
Q. How did you form that opinion?
A. From reading the evidence on the conspiracy trials.
Q. Are you conscious of having such a bias on your mind at this time as would render you incapable of giving an impartial verdict between the United States and the prisoner?
A. I do not think I could give such a verdict.
Excused.

AUGUSTUS SCHNEIDER was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. How?
A. From reading the proceedings of the trial at the arsenal. I will here state that there is another reason why I think I ought to be excused. I am at work up in the post office, and there is nobody there except myself to attend to it. I will have to stop the work if I am required to sit as a juror here.
Excused.

ROBERT M. COMBS was called.

The COURT. The mayor certifies that Mr. Combs is one of the corporation weigh-masters in the Sixth ward, and is at this time very much engaged in that business.
The DISTRICT ATTORNEY. Is that a good excuse, your honor? It is not made so in the act.
The COURT. It is a public employment.
Excused.

CHARLES E. RITTENHOUSE was called.

The COURT. Mr. Rittenhouse is subject to some infirmity that renders him unfit to sit as a juror. I do not know what it is. He is excused.

JOSEPH G. WATERS was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?
A. I have.
Q. How did you form it?
A. From reading the proceedings of the trial of the conspirators.
Q. Have they left such an impression on your mind as to render you incapable of rendering an impartial verdict between the United States and the prisoner at the bar?
A. They have, to a certain extent.
Q. Does that bias go to such an extent that you could not weigh the evidence impartially?
A. It would certainly require a very large amount of evidence to get rid of the impression left upon my mind.
The COURT. That is a bias. You are excused.

WILLIAM W. BIRTH was called, and being duly sworn, was examined on his *voire dire* as follows:

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form it?

A. From reading the testimony in the conspiracy trial.

Q. Is the bias upon your mind so great as to render you incapable of weighing the evidence in the case impartially?

A. I think not.

Q. Do you entertain any conscientious convictions as to the guilt or innocence of the prisoner at the bar?

A. No, sir.

The COURT. He is a competent juror.

Mr. BIRTH. I would suggest, your honor, that I am summoned on the next grand jury.

The COURT. O, well, if you are sworn in this case it will be a good excuse for getting off from service there. The other court would hardly expect you to serve there if you are engaged here.

Mr. Birth was then accepted.

The DISTRICT ATTORNEY. I would state, your honor, that we wish in this case to pursue the course, ordinarily adopted in such cases, of having the eleven jurors sworn now, and the twelfth remain unsworn until Monday morning, in order that the jury may be allowed to separate and be at liberty on to-morrow, (Sabbath,) and thus be able to make such arrangements as they may desire before entering upon the trial on Monday.

Mr. BRADLEY. That is all very well if we had not understood from our learned brothers that, unless the whole panel was sworn in to-day, there is no panel; that the case is not made up. We learn from them that that is their interpretation of the law, and, therefore, if they should succeed in maintaining that view, this week's work will be lost unless this jury is sworn in before Monday. We can agree among ourselves very readily that there may be a recess from now until some time this evening, when the jury can be sworn in. But unless that is done—unless the panel is made complete—if your honor will look at the statutes you will find that these gentlemen will accomplish in this way just what they would have accomplished by their motion which has been denied. To acquiesce in the suggestion of the learned district attorney will defeat all the work of the past week.

Mr. PIERREPONT. If your honor please, this question was up before Judge Fisher, and the conclusion he then announced from the bench, and which I supposed was concurred in by counsel on both sides, was this, "That should the jury be sworn in before the meeting of the next term, to wit, 10 o'clock on Monday morning, it was all that was required." That is the view then expressed, as I understood, and, I repeat, concurred in by counsel on both sides. The jurors, therefore, being obtained, let the swearing in of the twelfth one be deferred until Monday morning, and thus will the necessity of keeping the jury together over Sunday be avoided.

Mr. MERRICK. If your honor please, I think my learned brother is in error as to the conclusions to which the judge and counsel came. I say this with all due respect. It was suggested when Judge Fisher was on the bench that the time was very much limited within which to get a jury, Saturday night being fixed as the extent of that limitation. I suggested that at common law, as I understood it, a session of the court or a term of the court never ended until the

first day of the succeeding term, and that the court ought to be called on the first day of the succeeding term as of the old term, and I believe that to be the rule, that this court may be called on Monday morning. There is great doubt, however, as to what may be done by the court on that first day of the new term acting as of the old term, and I find that the general rule is that nothing can be done except the mere correction of its records as of the old term; that you cannot then enter upon new business. Now, the swearing of the twelfth juror being the completing of the panel, would be the entering upon the case anew, and the act of Congress says that the case can only go on where a new term intervenes during its progress—where the jury has been impanelled, and it is necessary, therefore, to complete the empanelling in order to get rid of the question of doubt in reference to the matter. It certainly is expedient that the panel should be completed to-day.

The DISTRICT ATTORNEY. If your honor please, our only object is, if possible, to avoid keeping the jury unnecessarily in confinement over Sunday. I would suggest, sir, that we might adjourn this court over to meet at 9 o'clock on Monday morning, in order to meet the view of the gentlemen.

Mr. MERRICK. Yes; but at common law you cannot divide a day.

The DISTRICT ATTORNEY. I am distinct in my recollection that Judge Fisher——

Mr. MERRICK. You made a similar suggestion to Judge Fisher, and he said laughingly that you might even sit on Sunday; that he would sit right straight through.

Mr. PIERREPONT. Could not this court be adjourned to Sunday night? It seems to me that if we can avoid keeping this jury over Sunday it would be well to do so.

The COURT. Sunday is a "*dies non juridicus.*"

Mr. PIERREPONT. Well, sir, we will agree to anything that is proper by which this jury can have their freedom on Sunday.

Mr. BRADLEY. If the gentlemen will agree that the prisoner can consent to the jury separating after being sworn until Monday morning, there will be no difficulty whatever in accommodating the jury in the way of which the gentleman speaks. Their doctrine, however, is that the prisoner can consent to nothing; that by the most formal stipulations he cannot waive any of his rights. We apprehend, therefore, that difficulty may arise in the event of the jury separating without being sworn. I do not see how the end which the gentleman says he aims at, of giving the jurors time to make necessary arrangements for sitting on the trial, can be obtained otherwise than by letting the jurors go now until 9 or 10 o'clock to-night, and then resuming the session of the court at that time to have them sworn in.

The COURT. I would like to see the language of the act.

Mr. PIERREPONT. I supposed the proposition we made could not by any possibility work against the prisoner.

Mr. BRADLEY. I am not quite sure, if your honor pleases, who is to preside over the trial of this case; and what his view may be of the question to-day made by the gentlemen, I do not know; and we do not think it proper to run any risk about this matter. The prisoner is now upon his trial; a jury has been selected, and is ready to be empanelled; and the law says unless it is empanelled before the next term, the case shall be continued.

Mr. PIERREPONT. We have no other object in view than the securing for these jurors the privilege of separating until Monday. Any mode which may be suggested that will accomplish that object we will readily adopt.

Mr. MERRICK. We are as desirous as the gentleman can be, of accommodating the jury, but we do not wish to embarrass the proceedings in the case.

Mr. BRADLEY. I do not see how we can bind the United States to any such stipulation as is proposed.

The DISTRICT ATTORNEY. The language of the law is this:

Mr. PIERREPONT. So far as I can understand, the panel has now been formed, and I cannot see why, under that statute, the panel having been formed, the court cannot adjourn; but of course that is a matter for your honor to determine.

Mr. BRADLEY. Does my learned brother mean to say that a jury is empanelled in a cause before it is sworn?

Mr. PIERREPONT. It is generally sworn in connection with it.

Mr BRADLEY. There is no panel in this particular case.

Mr. MERRICK. When is a jury empanelled?

Mr. PIERREPONT. That is the question.

Mr. MERRICK. The jury cannot be said to be empanelled until the last man is sworn upon the issue.

Mr. PIERREPONT. I do not want to appear or claim to be at all learned upon the technical question as to when a jury is and when it is not empanelled, but my own impression is that when a jury is ordered into their seats, the panel is completed. The swearing of them is proceeded with in different ways in different courts. In some courts they are sworn separately, and in others again they are all sworn together.

The COURT. We have always understood here, I think, that the jury is regarded as empanelled after the clerk pronounces the words: "Gentlemen of the jury, stand together and hear the evidence." That closes the empanelling of the jury.

Mr. Bradley read from Wharton's Criminal Laws as follows: "Until the jury are all sworn, as has been already noticed, it is not necessary that they should be kept together. They are not empanelled until the whole jury is sworn."

The COURT. I think the best way under this law is to have the jury empanelled without delay.

Mr. BRADLEY. I suggest to your honor that we might take a recess until ten o'clock to-night, and then swear in the last juror.

The COURT. If agreeable to counsel the court will make that order.

The DISTRICT ATTORNEY. If your honor please, attachments were issued against Messrs. George H. Plant and William P. Dole. These gentlemen are now in court; what shall be done with them?

The COURT. O, we are so happily through, now, that I am not disposed to punish them. They are discharged.

After an order for the discharge of all jurors who had been summoned and not called, the court took a recess till ten o'clock p. m.

EVENING SESSION.

The court reassembled at ten o'clock, evening, in the circuit court room, pursuant to adjournment at half past one o'clock.

The prisoner having been brought into court, Judge Wylie announced the fact, and asked the counsel if they had any proposition to make.

The jurors were then called, and Mr. Birth, the twelfth juror, was about to be sworn, when Mr. Pierrepont said he did not know what conclusion had been arrived at in reference to a stipulation allowing the jury to separate.

The COURT said he knew nothing of a stipulation, and could only pass upon such agreement as was consented to by counsel.

Mr. PIERREPONT said there seemed to be a doubt in the mind of the district attorney whether the jury could separate after having been empanelled in a murder trial.

Mr. BRADLEY said the whole subject was a matter of agreement between counsel, and he proposed to read a stipulation that the defence had offered.

The COURT said he had no desire to hear it, because all parties must first agree, and it was for the court to decide what had been agreed upon.

Mr. MERRICK said the defence desired to have the last juror sworn, and then to allow the jurors to separate until Monday morning.

The COURT said he did not wish to hear the contents of any agreement, unless it had been consented to on all sides.

Mr. BRADLEY asked if the counsel should agree that the jury should be discharged, whether such agreement would meet the approval of the court.

The COURT said he was clearly of the opinion that, under the act of Congress, the jury must be empanelled and sworn. The act uses the word panelled, but the panel is not completed until the jury is sworn. The word panelled was a technical word, but it had evidently been used by the lawmaker in its proper sense, and it is therefore necessary that all the jurors shall be sworn.

Mr. Birth, the twelfth juror selected, was then sworn.

Mr. BRADLEY said that, with the permission of the court, he would submit a motion that the indictment should not be read, or the jury fully charged in the case, until Monday morning, and that some stipulation be agreed upon whereby the jury should be discharged.

The counsel for the prosecution wrote out a stipulation to the effect that the jury might be discharged until Monday morning, with the consent of the court, and without prejudice to either party.

Mr. BRADLEY said they could not consent to that. The defence offered a stipulation that the same jury should be retained, and that there should be no prejudice to either party, in order that some of the questions that had heretofore engaged the attention of the court might again arise. The defence made the offer, and it was for the prosecution to accept or reject.

Mr. PIERREPONT said the defence should accept the proposition of the prosecution, or the whole question was at an end.

Mr. MERRICK said the prosecution had so modified the stipulation submitted by the defence as to make much difference. Under the stipulation offered by the prosecution the whole subject may be brought up, and the court may be asked to act anew.

Mr. PIERREPONT said the stipulation of the prosecution was that, if the court consented, the jury might separate without prejudice to either party.

Mr. BRADLEY said the defence stipulated in such a way as to prevent the question from being reopened, while the stipulation of the prosecution leaves the whole subject open.

The COURT said it appeared counsel could not agree, and he would, therefore, put the jury in charge of the bailiff.

Mr. PIERREPONT said the stipulation offered by the defence covered a great deal. The prosecution was willing to stipulate that the jury should separate, but they could not agree to waive their exception to the mode of empanelling the jury. They were willing to take this jury, however.

Mr. BRADLEY said the prosecution, it appeared, were willing to take this jury, but proposed to raise the question of the legality of the panel. It was this that the defence wanted to prevent, as they desired not to open the question of the legality of the panel on Monday.

The COURT said, he understood that the prosecution was not willing to waive the exception they had taken to the empanelling of the jury.

Mr. PIERREPONT said he would state candidly that the prosecution desired this jury, as they believed them to be good and fair men, and that was all they had wanted. If, on Monday, it should appear to the court that the jury was not legally empanelled. Judge Cartter, who would be here at that time, could dis-

charge the jury, and immediately subpœna them over. They would agree to any reasonable stipulation, but they wanted all things done fairly, as the trial promised to be a long and tedious one.

Mr. MERRICK argued that to make the trial legal the jury should be empanelled to-night. On Monday Judge Cartter would open the June term of the criminal court, and it was necessary that the jury should be empanelled at this term.

Mr. BRADLEY said that the whole action of the prosecution seemed to look as though an appeal was to be taken from the decision of Judge Fisher and Judge Wylie to Chief Justice Cartter, and it was to prevent all objection on Monday that the defence desired to have an explicit stipulation consented to. If the prosecution desired to have the jury separate, they could agree to that stipulation.

The DISTRICT ATTORNEY said it seemed to him that the stipulation of the United States was perfectly fair, namely: That the jury separate until Monday without prejudice to the rights of either party.

Mr. BRADLEY. What objection have you to our stipulation? We have not heard it yet.

Assistant District Attorney WILSON. We have an exception on file to the empanelling of the jury. The other side asks us to deprive ourselves of that advantage.

Mr. BRADLEY. We will accept that, and will modify our proposition in that way, but not deprive ourselves of the right of the trial by jury.

Mr. MERRICK was willing to say that the terms of the stipulation were not to apply to any exception taken by the United States, or appeal to the court in general term.

Mr. PIERREPONT. If you are willing to let the jury separate, and the case stands as it does now until Monday, this stipulation covers it.

Mr. BRADLEY. Counsel on the other side have stated their object to be to save this exception. If there is anything else to save, let us know.

Mr. PIERREPONT. We only wish to give the jury the benefit of a separation. We don't wish either party to waive any right.

Mr. MERRICK. The gentleman stated the question about the empanelling of the jury which Judge Cartter may entertain on Monday; but there was no exception Judge Cartter could entertain. It could only be entertained by the court in general term.

Mr. PIERREPONT. I have no doubt about that.

Mr. MERRICK. The gentleman said the exception might come before Judge Cartter.

Mr. PIERREPONT. I said whoever might preside; and to avoid any question about the mode of empanelling the jury, we are ready to stipulate that this same jury shall continue to be the jury; but we did not want to have the question entirely out of the way.

Mr. BRADLEY. It is impossible to come to an accommodation with such diverse views. We want the jury to go home without reservations or questions as to the empanelling.

The COURT. Why not, gentlemen, charge the jury to-night?

Mr. BRADLEY. We shall ask your honor to have the indictment read.

The indictment on which the prisoner was arraigned was accordingly read to the jury.

The CLERK, after reading, said: "And to this indictment the prisoner pleads not guilty, and puts himself upon his country for trial, which country you are."

Mr. MERRICK. We now propose the jury be allowed to separate till Monday morning. The prisoner, through his counsel, asks this privilege for the jury.

Messrs. PIERREPONT and CARRINGTON. We don't object. We offered the stipulation.

Mr. BRADLEY. Nothing like it.

The COURT. By consent of counsel on both sides, the jury will be permitted to separate. The clerk will enter this upon the record. To the jury: Be here, gentlemen, on Monday morning at ten o'clock. I do not know that I shall have the pleasure of seeing you. The jury are admonished to avoid conversation with anybody on the subject of this cause. If you are thus approached, you should regard it as a personal indignity. I am inclined to think that under the act of Congress this term is extended. I shall not, therefore, order the court adjourned in course, but adjourned until Monday morning at ten o'clock.

The court was accordingly adjourned.

MONDAY, *June* 18, 1867.

CRIMINAL COURT—Associate Justice Fisher, presiding.

The court was opened at ten o'clock, when the clerk proceeded to call the names of the jurors empanelled on Saturday, when they all responded.

Mr. BRADLEY, Jr., then rose and said: "May it please your honor, before the district attorney proceeds to open the case to the jury, I desire to present an application to the court in behalf of the prisoner, in reference to the procuration of his witnesses."

The paper was then read, as follows:

To the honorable the justice of the supreme court of the District of Columbia, holding the criminal court for March term, 1867:

The petition of John H. Surratt shows that he has now been put on his trial in a capital case in this court; that he has exhausted all his means, and such further means as have been furnished him by the liberality of his friends, in preparing for his defence, and he is now unable to procure the attendance of his witnesses. He therefore prays your honor for an order that process may issue to summon his witnesses, and to compel their attendance, at the cost of the government of the United States, according to the statute in such case made and provided.

JOHN H. SURRATT.

Sworn to in open court, this 17th June, 1867.

Test: R. J. MEIGS, *Clerk*.

Mr. BRADLEY. We merely submit the motion now; your honor can determine upon it in the progress of the cause.

The COURT. Very well; your petition, however, I will remark, it seems to me ought to indicate the witnesses that you desire, and where they reside. I may be mistaken in that respect, however.

Mr. BRADLEY. If the application is granted, of course we will have the order drawn up so as to conform to the requirements of the statute.

The COURT. Gentlemen, are you now ready to proceed with the case?

Mr. BRADLEY. We are, sir.

Mr. CARRINGTON said the assistant district attorney would open the case.

Mr. NATHANIEL WILSON, assistant district attorney, then addressed the jury as follows:

May it please your honor and gentlemen of the jury, you are doubtless aware that it is customary in criminal cases for the prosecution, at the beginning of a trial, to inform the jury of the nature of the offence to be inquired into, and of the proof that will be offered in support of the charges of the indictment. By making such a statement I hope to aid you in clearly ascertaining the work that is before us, and in apprehending the relevancy and significance of the testimony that will be produced as the case proceeds.

The grand jury of the District of Columbia have indicted the prisoner at the bar, John H. Surratt, as one of the murderers of Abraham Lincoln. It has become your duty to judge whether he be guilty or innocent of that charge—a duty than which one more solemn or momentous never was committed to human intelligence. You are to turn back the leaves of history to that red page on which is recorded in letters of blood the awful incidents of that April night on which the assassin's work was done on the body of the Chief Magistrate of the American republic—a night on which for the first time in our existence as a nation a blow was struck with the fell purpose of destroying not only human life, but the life of the nation, the life of liberty itself. Though more than two years have passed by since then, you scarcely need witnesses to describe to you the scene in Ford's theatre as it was visible in the last hour of the President's conscious life. It has been present to your thoughts a thousand times since then. A vast audience were assembled, whose hearts were throbbing with a new joy, born of victory and peace, and above them the object of their gratitude and reverence—he who had borne the nation's burdens through many and disastrous years—sat tranquil and at rest at last, a victor indeed, but a victor in whose generous heart triumph awakened no emotions save those of kindliness, of forgiveness, and of charity. To him, in that hour of supreme tranquillity, to him in the charmed circle of friendship and affection, there came the form of sudden and terrible death.

Persons who were then present will tell you that at about twenty minutes past ten o'clock that night, the night of the 14th of April, 1865, John Wilkes Booth, armed with pistol and knife, passed rapidly from the front door of the theatre, ascended to the dress circle, and entered the President's box. By the discharge of a pistol he inflicted a death wound, then leaped upon the stage, and passing rapidly across it, disappeared into the darkness of the night.

We shall prove to your entire satisfaction, by competent and credible witnesses, that at that time the prisoner at the bar was then present aiding and abetting that murder, and that at twenty minutes past ten o'clock that night he was in front of that theatre in company with Booth. You shall hear what he then said and did. You shall know that his cool and calculating malice was the director of the bullet that pierced the brain of the President and the knife that fell upon the face of the venerable Secretary of State. You shall know that the prisoner at the bar was the contriver of that villany, and that from the presence of the prisoner, Booth, drunk with theatric passion and traitorous hate, rushed directly to the execution of their mutual will.

We shall further prove to you that their companionship upon that occasion was not an accidental nor an unexpected one, but that the butchery that ensued was the ripe result of a long premeditated plot, in which the prisoner was the chief conspirator. It will be proved to you that he is a traitor to the government that protected him; a spy in the employ of the enemies of his country in the years 1864 and 1865 passed repeatedly from Richmond to Washington, from Washington to Canada, weaving the web of his nefarious scheme, plotting the overthrow of this government, the defeat of its armies, and the slaughter of his countrymen; and as showing the venom of his intent—as showing a mind insensible to every moral obligation and fatally bent on mischief—we shall prove his gleeful boasts that during these journeys he had shot down in cold blood weak and unarmed Union soldiers fleeing from rebel prisons. It will be proved to you that he made his home in this city the rendezvous for the tools and agents in what he called his "bloody work," and that his hand provided and deposited at Surrattsville, in a convenient place, the very weapons obtained by Booth while escaping, one of which fell or was wrenched from Booth's death-grip at the moment of his capture.

While in Montreal, Canada, where he had gone from Richmond, on the 10th of April, the Monday before the assassination, Surratt received a summons from his co-conspirator, Booth, requiring his immediate presence in this city. In obedience to that preconcerted signal he at once left Canada, and arrived here on the 13th. By numerous, I had almost said a multitude of witnesses, we shall make the proof to be as clear as the noon-day sun, and as convincing as the axioms of truth, that he was here during the day of that fatal Friday, as well as present at the theatre at night, as I have before stated. We shall show him to you on Pennsylvania avenue booted and spurred, awaiting the arrival of the fatal moment. We shall show him in conference with Herold in the evening; we shall show him purchasing a contrivance for disguise an hour or two before the murder.

When the last blow had been struck, when he had done his utmost to bring anarchy and desolation upon his native land, he turned his back upon the abomination he had wrought, he turned his back upon his home and kindred, and commenced his shuddering flight.

We shall trace that flight, because in law flight is the criminal's inarticulate confession, and because it happened in this case as it always happens, and always must happen, that in some moment of fear or of elation or of fancied security, he, too, to others, confessed his guilty deeds. He fled to Canada. We will prove to you the hour of his arrival there, and the route he took. He there found safe concealment, and remained there several months, voluntarily absenting himself from his mother. In the following September he again took flight. Still in disguise, with painted face and painted hair and painted hand, he took ship to cross the Atlantic. In mid-ocean he revealed himself and related his exploits, and spoke freely of his connection with Booth in the conspiracy relating to the President. He rejoiced in the death of the President; he lifted his impious hand to heaven and expressed the wish that he might live to return to America and serve Andrew Johnson as Abraham Lincoln had been served. He was hidden for a time in England, and found there sympathy and hospitality: but soon was made again an outcast and a wanderer by his guilty secret. From England he went to Rome, and hid himself in the ranks of the Papal army in the guise of a private soldier. Having placed almost the diameter of the globe between himself and the dead body of his victim, he might well fancy that pursuit was baffled: but by the happening of one of those events which we sometimes call accidents, but which are indeed the mysterious means by which Omniscient and Omnipotent Justice reveals and punishes the doers of evil, he was discovered by an acquaintance of his boyhood. When denial would not avail he admitted his identity, and avowed his guilt in these memorable words: "*I have done the Yankees as much harm as I could. We have killed Lincoln, the niggers' friend.*" The man to whom Surratt made this statement did as it was his high duty to do—he made known his discovery to the American minister. There is no treaty of extradition with the Papal States; but so heinous is the crime with which Surratt is charged, such bad notoriety had his name obtained, that his Holiness the Pope and Cardinal Antonelli ordered his arrest without waiting for a formal demand from the American government. Having him arrested, he escaped from his guards by a leap down a precipice—a leap impossible to any but one to whom conscience made life valueless. He made his way to Naples, and then took passage in a steamer that carried him across the Mediterranean sea to Alexandria, in Egypt. He was pursued, not by the "bloodhounds of the law" that seem to haunt the imagination of the prisoner's counsel, but by the very elements, by destruction itself, made a bond-slave in the service of justice. The inexorable lightning thrilled along the wires that stretch through the waste of waters that roll between the shores of Italy and the shores of Egypt, and spoke in his ear its word of terrible command, and from Alexandria, aghast and manacled he was made to turn his face

towards the land he had polluted by the curse of murder. He is here at last to be tried for his crime.

And when the facts which I have stated have been proved, as proved they assuredly will be if anything is ever proved by human testimony; and when all the subterfuges of the defence have been disproved, as disproved they assuredly will be, we, having done our duty in furnishing you with that proof of the prisoner's guilt, in the name of the civilization he has dishonored, in the name of the country he has betrayed and disgraced, in the name of the law he has violated and defied, shall demand of you that retribution, though tardily, shall yet be surely done, upon the shedder of innocent and precious blood.

Mr. Bradley, sr., said the defence would reserve their opening remarks to the jury.

EVIDENCE.

MONDAY, *June* 17.

The Court met at 10 a. m.

JOSEPH K. BARNES, Surgeon General United States army, residence Washington city, was sworn and examined as follows:

By the DISTRICT ATTORNEY:

Q. Were you acquainted with Abraham Lincoln, late President of the United States?

A. I was.

Q. Were you called in your official capacity to visit him about the 14th of April, 1865? If so, state where it was, and what his condition was at the time?

A. I was called to visit him on the night of the 14th of April. I found him dying from the effect of a gunshot wound in the head. I remained with him until he died.

Q. State where that was?

A. At Mr. Peterson's, on the west side of 10th street, opposite Ford's theatre. I do not know the number of the house.

Q. Please go on and describe fully and accurately the character of the wound, and whether, in your opinion, that wound caused his death.

A. The ball entered the scull to the left of the middle line, and below the line with the ear. It ranged forward and upward toward the right eye, lodging within half an inch of that organ. That wound was the cause of his death. He lived until twenty minutes past seven on the morning of the 15th. He was not conscious at any time after receiving the wound.

Q. Were you present when he died?

A. I was.

Q. You were not in the theatre that night?

A. No, sir.

Q. It was at Mr. Peterson's, on 10th street, I understand you to say, where you were called to see him, in this city?

A. Yes, sir.

Q. Were you present at the *post mortem* examination?

A. I was.

Q. State if upon the *post mortem* examination you discovered any new fact that you think it important to state to the jury, or whether it simply confirmed you in the belief that the wound was the cause of his death?

A. The *post mortem* examination merely confirmed my opinion of the night previous, that the gunshot wound was the cause of his death.

Q. Who were present at Mr. Peterson's house at the time you were first called in?

A. Dr. Stone, Dr. Lieberman, Dr. Tafts, Dr. Ford, some members of the cabinet, and some officers of the army.

Q. Did you examine the bullet?

A. I did; but not with the view of ever recognizing it again.

Q. You can give some general description of it?

A. Yes, sir, I can give a general description.

Q. You do not know that you would be able to identify the particular bullet if you were to see it again?

A. No, sir.

Q. Can you express an opinion as to what sort of an instrument this was inflicted with?

A. I call it a gunshot wound, as we do all injuries inflicted by projectiles.

Q. Can you give us any opinion as to the character of the instrument, whether it was large or small?

A. I think it was a wound from a pistol ball, at a very short range.

No cross-examination.

JAMES M. WRIGHT, chief clerk Bureau of Military Justice, residence Washington, sworn and examined.

By the DISTRICT ATTORNEY:

Q. Will you examine the package on the desk before you, and state if the articles contained therein were placed in your official custody; and if so, by whom and when, and whether they have been in your official custody from the time you received them until now?

A. These articles belong to the government, and have been in my official custody ever since the records of the conspiracy trial were sent to the office. These are exhibits which were then given in evidence. They are all marked. Here is a ball, and here is a part of the skull, (witness removing paper covering around the articles as he referred to them.) This is the pistol that came along with the other articles.

By Mr. BRADLEY:

Q. Who put these things in your custody?

A. Judge Holt. They came from the War Department. I believe, after the decision of the commission was promulgated.

Q. Were the packages when you received them sealed up or open?

A. They were all open just as they are now. They have various marks on the back of them which I never read.

JOSEPH K. BARNES, re-called.

By the DISTRICT ATTORNEY:

Q. Will you examine these two exhibits (handing witness certain articles enclosed in paper covering) and state if you ever saw them before. If so, when and where, and under what circumstances?

A. I recognize in one of these papers a fragment of bone that was taken out of Mr. Lincoln's head on the morning of the 15th of April, by Dr. Woodward, in the presence of Dr. Stone and myself. This in the other paper (holding in his hand a small piece of lead) I recognize most positively as the shred of lead that was found just inside of the wound, on the edge, and taken away by us. This (holding up a leaden ball) resembles most closely the ball. I could have described it so that you could have recognized it from its flattened curled edges. That was found in the position I have described, behind the orbit of the right eye, and buried in the brain.

Q. Did you see the pistol there?

A. I know the kind of pistol. I never saw this one here. That is the ball, however, for a pistol of this size.

Q. That ball resembles in appearance the one which you saw taken from Mr. Lincoln's head?

A. Yes, sir. This is very much discolored. I made a cut upon this ball, because it is made of very much denser lead than is generally used in balls. It is made of brittannia rather than lead.

Q. Do you see that cut now?

A. I do not recognize it, it is so much discolored. I made no private mark on the ball.

Q. Suppose you state now whether that is hardened lead or not. See if there is any mark upon it?

A. Not to my eye, I cannot detect any.

Q. Was there any mark put upon it at the time of the *post mortem* examination?

A. Not that I know of.

By Mr. BRADLEY:

Q. Did I understand you to say you cut this ball?

A. I merely touched it with my knife. It has become black since then.

Q. You did not make any incision?

A. No, sir.

By Mr. WILSON:

Q. Who made the *post mortem* examination?

A. Dr Woodward of the army, my assistant, made it by my orders.

Q. You were present?

A. Yes, sir; and Dr. Stone was present also.

WILLIAM F. KENT, residence Eighth street east, near D, Washington, sworn and examined.

By the DISTRICT ATTORNEY:

Q. Were you at Ford's theatre in this city on the night of the 14th of April, 1865?

A. I was.

Q. Examine this pistol and state whether you ever saw it before, or one similar to it?

A. I think it is the same pistol I picked up in the box the President occupied during the night of the 14th of April. I was present during the play; heard the shot; saw the man jump out of the President's box; and I ran round from the parquette to the entrance of the President's box, which I entered. When I entered it there were two men present, who were in the act of lifting the President out of his chair and placing him on the floor. Some one helped a surgeon up from the stage, and he asked if any one present had a penknife. I handed him mine, and with that he cut the President's clothes open, examined the body, and turned him over to see where the wound was. Not discovering any on his body, he run his hand round his head, and then said, "Here is the wound;" "here is where he is shot," or words to that effect. After they had carried him out of the theatre, I went out also. As I was about to go into my boarding-house—I was then boarding on E street, near the theatre—I missed my keys. Thinking that in pulling out my penknife I might have pulled out the keys with it, and dropped them in the box, I turned and went back to the theatre, and entered the box again. It was then pretty dark, they having turned down all the gas, and I could not see. In moving round in the box, I knocked my foot against something hard on the floor. I stooped down and picked up what proved to be this pistol. It was lying close to the outside of the box. I immediately held it up, and exclaimed, "I have found the pistol." Some person present told me to give it to the police. I did not see any there. Just then a man who represented himself as Mr. Gobright, agent of the associated press, came up, and being vouched for by several persons, I gave the pistol to him. The next morning I identified the pistol at the police station. This is apparently the same pistol, as far as I can judge from the appearance of it. It was about the length of this one.

No cross-examination.

HENRY R RATHBONE, brevet lieutenant colonel in the regular army, and assistant adjutant general of volunteers, residence Albany, New York, sworn and examined.

By the DISTRICT ATTORNEY:

Q. Did you know the late Abraham Lincoln, President of the United States? If so, state whether you saw him on the evening of the 14th of April, 1865, where you saw him that evening, and all that occurred from that time until he received his death wound.

A. I was well acquainted with the late President Lincoln, and was present with him on the night of the assassination.

Q. State all that then occurred.

A. On the evening of the 14th of April, at about twenty minutes past eight, I, in company with Miss Harris, left my residence at the corner of Fifteenth and H streets, joined the President and Mrs. Lincoln, and went with them in their carriage to Ford's theatre, on Tenth street. When we reached the theatre and the presence of the President became known, the actors stopped playing, the band struck up "Hail to the Chief," and the audience rose and received them with vociferous cheering. The party proceeded along in the rear of the dress circle to the box which had been set apart for their reception. On entering the box there was a large arm-chair placed nearest the audience, and furthest from the stage, which the President took and occupied during the whole of the evening with one exception, when he rose and put on his coat. He immediately after, however, resumed his former position. When the second scene of the third act was being performed, and while I was intently observing the performance on the stage, I heard the report of a pistol from behind me, and on looking round saw dimly through the smoke the form of a man between the President and the door. I heard him shriek out some such word as "Freedom." He uttered it in such an excited tone that it was difficult for me to understand what he said. I immediately sprung towards him and seized him. He wrested himself from my grasp, and at the same time made a violent thrust at me with a large knife. I parried the blow by striking it up, and received it on my left arm, between the elbow and shoulder, and received a deep wound. The man sprung towards the front of the box. I rushed after him, but only succeeded in catching his clothes as he was leaping over the railing of the box. I think I succeeded in tearing his clothing as he was going over. I instantly cried out, "Stop that man." I then looked towards the President. His position had not changed, except that his head was slightly bowed forward and his eyes were closed. Seeing that he was insensible, and believing him to be mortally wounded, I rushed to the door for the purpose of getting medical aid. I found the door barred with a piece of wood, a heavy piece of plank, which was resting against the wall and against the centre of the door, about four feet from the floor. The people on the outside were beating against it. With some difficulty I removed the bar, and those who were there came in. When I returned into the box I found that they were examining the person of the President, but had not yet found the wound. When it had been discovered it was determined to remove him from the theatre, and I with some assistants went with Mrs. Lincoln to the house on Tenth street opposite the theatre.

Q. Will you state your relative positions? In the first place, who were in the box occupied by the President besides yourself?

A. President Lincoln, Mrs. Lincoln, and Miss Harris. President Lincoln was sitting at that part of the box furthest from the stage and nearest the audience. Mrs. Lincoln was sitting nearest to him.

Q. Toward the front of the box?

A. Yes, sir; some two feet distant, probably. Miss Harris was next to her, and I a little in the rear.

Q. Did you get a good look at the man who fired the pistol?
A. I did not: I only saw him dimly through the smoke.
Q. You would not be able to identify him?
A. No, sir.

By Mr. PIERREPONT:

Q. Did you examine this plank that you speak of?
A. Not carefully.
Q. Did you observe to see how it was fixed?
A. I merely know that it barred the door and rested against the wall, and against the centre of the door, and that I removed it with difficulty, so securely was it fixed.
Q. Do you know whether there was any niche in the wall?
A. I did not notice.
Q. Nor how it was fastened against the door?
A. No, sir.
The court here took a recess for half an hour.

AFTERNOON SESSION.

JOSEPH B. STEWART, residence Westchester county, New York, sworn and examined.

By the DISTRICT ATTORNEY:

Q. You have resided in Washington city?
A. I resided in Washington city for a time.
Q. And practiced at this bar?
A. And practiced at this bar in this court; yes, sir.
Q. State to the jury whether you were at Ford's theatre, in this city, on the night of the 14th of April, 1865. If so, state your position at the time, and everything that occurred there under your observation, connected with the assassination of the late President of the United States.
A. I was at Ford's theatre on the night of the 14th of April. I went in company with my sister, or sister-in-law, and two other ladies. I occupied four seats directly in front of the orchestra. To illustrate what I want to say: the theatre is divided by two aisles one on the left and one on the right. I was seated in the left-hand corner chair (looking towards the stage) on the right-hand aisle. The four seats I had taken would commence with the corner; I occupying the corner seat, and the three on my left. I was just in a position where I could see everything on the stage, and off at an angle could see the President and the company who were with him. A young lady sat next him, and then a gentleman who I knew to be Major Rathbone. I believe Mrs. Lincoln sat next. They were in a second-tier box, and just in a position where I could see from the breast up, of the President, and the upper portion of the breast and face of the other persons in the box. I frequently noticed the box during the performance, and more than once had occasion to remark on the presence of the President, and his appearance. At the moment of the occurrence I am about to state, there was a pause, a sort of interlude, when, while not looking straight at the box, I saw a flash and heard the report of a pistol or gun, a clear report like that of a shotted gun. Any one at all accustomed to hear the report of a gun can tell the difference. I, at the moment, was speaking to my sister, and on raising my head, and directing my attention to the box, I saw, at the same instant, a man coming over the balustrade, and noticed the curl of smoke right immediately above him, as he was in a crouching position, in the act of leaping out of the box. It was slowly sailing out from the box. As he cleared the box I heard him exclaim, "*Sic semper tyrannis.*" That exclamation had escaped his lips before he reached the stage below. This person

came down to the stage with his back to the audience, crouched as he fell, and came down upon his knees with a considerable jar, but rose instantly with his face turned full upon the audience. I noticed at the same instant that he held a very large knife in his hand. At the moment he rose, and by the time he was fully up, with his face to the audience, my attention was fixed right on him. I rose up, stepped forward on the balustrade of the orchestra, but it seemed to project over with a sort of cushion or something, and my foot slipped. I stepped into the chair I occupied and jumped over on to the stage, keeping my eyes distinctly on the movements of this man, who I thought I recognized when I looked into his face. As I made my second step I threw my eye back to the box, and could see the other persons, but could no longer see the President. He had disappeared from my view. When I reached the stage this man crossed rapidly, not in a full run, but in a quick springing walk, over to the left-hand side of the stage. I saw him disappear in the passage leading to the rear of the building. I crossed the stage in less time then he did, considerably. I ran across the stage with all my might I said to persons on the stage, "Stop that man; he has shot the President." When I turned around towards the back building, and had gone perhaps a second or third step, I heard the door slam at the end of the passage. As many as five persons, ladies and gentlemen, whom I would suppose, from their appearance and action, belonged to the stage, came into the passage. They were in a great state of excitement, and somewhat obstructed my movements, particularly one lady, who seemed to be wild with excitement. Near the door, as I approached it, I noticed a man standing.

Q. Near the back door?

A. Yes, near the door, which evidently had slammed, and through which I passed out. When I first observed him, his face was turned towards the door. He gradually turned towards me, but in a very quiet manner; did not show any of that measure of excitement and agitation which characterized everybody else I saw. I exclaimed again, and heard somebody say, "He is getting on a horse." By this time I was at the door. All this occurred in less time than I am telling it. When I reached the door, which was in an instant, I first took hold of the hinge side, then changed to the other side, and opened it. I heard the tramping of the feet of a horse outside. I passed within a half arm's length of this person, who was standing in the position I have mentioned, and who turned his face toward me. As I opened the door a person was right at it, and, as I passed out, directly under my arm, or, I might say I passed my arm directly over the head of that person. The action of that person was much like one taken by surprise. He seemed to crouch away. He either might have passed in to the door behind me or at the side door. He seemed to give way as I passed. My attention was not directed to his action more than to observe that that person was there. My attention was fixed upon the movements of the man mounting his horse. He was imperfectly mounted; was in the saddle, but leaning over to the left. The horse was moving with a sort of jerking, agitated gait, as a horse would do if spurred or touched at the instant of mounting, describing a sort of semicircle from right to left, as I have had a horse do, with an uneven rein drawing him a little to one side. I never had been in the alley before. I did not know even that there was an alley there, and was disappointed to find it there. I approached immediately, with the intention of taking the rein. The horse was heading round, in the direction that would bring his head directly towards some houses there. I ran as fast as I possibly could, aiming to get at the reins of the horse. I got up near the flank of the horse and nearly within reaching distance of the man—a stride further, and I might have got hold of the bridle. With an oath he brought his horse round so quick that his quarter came against my arm, so that I gave way towards the buildings. He then turned and came round pretty much the same way towards the right hand side of the alley. I followed him at the right flank of his horse

as I had done before until near the opposite side of the alley, when he headed him round, and, crossing the alley, I noticed that he leaned forward, holding firm his knife. Looking upward I could see every movement; when looking down I could see only indistinctly. When near the further side of the alley he brought the horse up and headed him off. At the moment the horse made the first turn from these buildings over on to the other side, I demanded of the person to stop. I had no doubt in my mind at all who I was speaking to. I believed I was speaking to John Wilkes Booth. At that instant some person ran rapidly out of the alley, and, after hearing a few taps of the foot going out of the alley, I heard two clicks or something that echoed, and directly a shrill whistle was heard over towards F street. That occurred while the horse was crossing from the left over to the right hand side of the alley, before he got him directly ahead. As soon as he got the horse headed he did not seem to get him completely under control of the rein until he came to the turn. I was then so near the flank of the horse that if he had taken another step in that direction I could have put my hands on him. He then crouched over the pommel of the saddle, and rode furiously out of the alley. I was so close to the horse at the time of the first two or three strides that he sent mud and dirt into my face and bosom. I still ran after the horse some steps; why I did it I do not know. It was a sort of feeling of desperation. I entertained no doubt in my mind on the stage, on seeing the person, of being able to lay hands on him in the house or out of it. I heard the horse's feet as he rode out of the alley distinctly, and heard them again in what I would take to be over F street. At all events, there was a quick sound like that of a horse crossing a plank. The direction was towards the Patent Office.

By Mr. PIERREPONT:

Q. Who was the man you saw come on to the stage and cross over?

A. That man was John Wilkes Booth.

Q. You have spoken of an alley through which the horse went; please state whether the diagram handed you is correct.

A. It is.

(The witness here explained to the jury, from the diagram handed him, the different positions in the alley, and also from another diagram the different positions referred to on the stage.)

By Mr. BRADLEY:

Q. You were on the opposite side of the stage, as I understand, from that on which Booth jumped?

A. Yes; I was on the right-hand aisle, I should judge about twenty feet from the extreme right-hand side of the stage.

JOHN B. PETTIT sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. State to the jury where you resided in April, 1865.

A. On the 14th of April, 1865, I occupied a room in the dwelling-house No. 339 F street, below Tenth. I ate elsewhere. I was in the rear part of the building. There was a back building to the house, which was occupied by Mrs. Lindsay.

Q. Describe the position and relation of your room to the back part of Ford's theatre.

A. I was in there that night or evening, and was not out till the next morning. The rear part of that building which I occupied was, I suppose, one hundred and fifty or two hundred feet from the rear part of Ford's theatre. I was in my room reading by gas-light.

Q. Describe, if you please, any sounds that you heard between the hours of eight and eleven o'clock.

A. Adjoining Mrs. Lindsay's house there was an eating saloon, kept by a Mr. Gilbert. The rear of it, with the exception of a small tenement, was adjoining the theatre lot. Immediately west of that lot was a vacant lot, which appeared to be a part of the same, and, I believe, was not separated from it by any fence. I was sitting with my back to that vacant ground. My attention was directed to several low whistlings, as though they were signals. I do not know how often they were repeated, but sufficiently often to attract my attention, in connection with some other noises which I heard.

Q. State where they appeared to come from.

A. The signals or whistlings appeared to come from this vacant ground. I stopped reading once or twice, and my attention was so much attracted to it that I got up to see if I could see any person, or what there was going on. It struck me there was some mischief going on—boys, or something of the kind. My attention was attracted to that in connection with the noise of a horse—as I supposed, it was immediately in the rear of me—which appeared to be very uneasy, changing his position on the paving stones back in the alley leading to the theatre from the east. I saw nothing, and knew nothing until the next morning of what had transpired that night.

Q. State whether or not you heard the sound of a horse rapidly retreating.

A. Yes, I did; some time after, a very short time. They appeared to be pretty much together—say within a quarter of an hour. All this passed, I should judge, in fifteen or twenty minutes or less. One of the whistlings, the last, was a very loud whistle.

Q. From what direction did the sound come?

A. The horse was very uneasy, and directly after this uneasiness had taken place the horse appeared to run down the alley. I could hear his hoofs very plain; as plain almost as if I had been in the alley, if it was in the alley. I do not know whether it was or not.

Q. This was about the time you heard the shrillest whistle?

A. It was after. There is an alley from the theatre running eastward; whether it was in that alley or not I cannot say; I saw nothing.

Q. Do you know at what time of the night that was?

A. Not accurately; it was pretty late. It was during the progress of the play. I could hear the voices of the actors. I frequently heard the voices of the actors from the room where I sat. During this time I heard the explosion of a gun or pistol, and I could hear voices. I do not know from what direction.

Q. I understand you that by the side of Gilbert's eating saloon, and back of it, the lots were vacant?

A. Yes, sir; there was an alley of some three or four feet between Gilbert's eating saloon and the dwelling where I resided. Immediately in the rear of Gilbert's saloon there was a vacant space of twenty, thirty, or forty feet, between that and the tenement-house occupied by a man of the name of Raidy. Adjoining that was a vacant space running to the theatre line, on F street, and to a tenement of a man by the name of Birch.

Q. So that there was free communication to F street?

A. I think there was no fence between these vacant lots and the theatre lot, because I know these Raidy's came back of the theatre to get water for washing.

Q. Do I understand you to say that immediately west of Gilbert's eating saloon there was a vacant lot?

A. Yes; my recollection is that there was no well-defined line between that and the vacant lot running from the theatre to the line of F street; but if I recollect right there was a board fence along on the street.

Cross-examined by Mr. BRADLEY:

Q. You say there was a fence on F street, across the vacant lot west of Gilbert's saloon: I understand you that there was no fence on the line of the alley inside?

A. No, there was none.

Q. Let me understand exactly this locality. You had rooms at Mrs. Lindsay's. West of you, with an alley three or four feet between, was Gilbert's eating saloon?

A. Yes; and west of that was the tenement of a man by the name of Birch.

Q. And between the eating saloon and Birch's house there was a three or four foot alley?

A. No, there was a vacant lot of perhaps twenty feet between the saloon and Birch's house.

Q. Who lived next east of Mrs. Lindsay's?

A. Mrs. Shinn, 341.

Q. Is there not an alley just beyond that?

A. No, sir; there is a frame building belonging to Mrs. Barry. Then there is a carpenter's shop between Mrs. Moore's house and the house of Mrs. Barry, and then Moore's house is on the corner of the alley.

Q. Is not the carpenter's shop on the alley?

A. No, sir; Moore's house is on the alley.

Q. Is not the alley west of Moore's house?

A. No, sir; east.

Q. I understand you then that your recollection is that there was no fence running on the west and north sides of the theatre alley, but that there were vacant lots running down to that alley?

A. My recollection is that there was no fence between the theatre lot and this vacant lot, and the lot occupied by Gilbert's eating saloon adjoined the vacant lot.

Q. You did not hear the testimony of Colonel Stewart?

A. No, I did not. I do not pretend to be accurate about the fence. My room fronted this vacant place, and I was there for several months, but I do not recollect about it.

JAMES P. FERGUSON, a resident of Washington, sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. State whether you were at Ford's theatre on the night of April 14, 1865, and state distinctly and as briefly as you can what you observed there about ten o'clock, or at the time of the assassination of the President.

A. On the 14th of April I was keeping a restaurant right adjoining Ford's theatre. Harry Ford came into my house in the afternoon and told me if I wanted to see General Grant I had better go into the theatre and secure a seat, as he was to be there that night—he and the President. Harry Ford was the treasurer of the theatre. He came into my house along about four o'clock in the afternoon and told me this. I went in and secured two seats. There was a lady who was going with me. I secured two seats in the dress circle right adjoining the private boxes, on the opposite side from the one in which the President was in at night. That night about half past seven I took this lady to the theatre and occupied these two seats in the dress circle. The President came in along about a quarter past eight, accompanied with some other gentleman whom I understood to be Major Rathbone, and two ladies, one of whom was Mrs. Lincoln; the other I did not know. They took their seats in the box, and the play went on until between fifteen minutes and half past ten, in the second act and the second scene of the American Cousin. I saw Wilkes Booth come around the dress circle down to the door at the entrance to the passage to the private boxes. He stood there and looked all around well. A few minutes before that General Burnside came in and took a seat in the orchestra. Booth looked about the dress circle, then into the orchestra, then stooped down and pushed open the door to the passage leading to the private boxes from the dress circle. There are two boxes there, but when the President occupied one the partition was taken away and the two thrown into one. He passed into the

little hall leading to the boxes where the President sat, and I did not see him for, I suppose, ten or fifteen seconds. I was looking right at the box, for I was very anxious to see whom he was acquainted with. I understood that this other lady was a Miss Harris. I wanted to see whether he was acquainted with this lady or with the President. I then heard the report of a pistol. I saw him go past the President's head and come right over the front of the box, swinging around, keeping his hand on the box and letting himself down. As he came down he struck on his right knee, but jumped to his feet again. He had a knife in his hand. He ran across the stage with his knife in his hand.

Q. Where did he disappear?

A. He passed out at the small passage where the actors come in. There is a passage on each side of the stage.

Q. Had you seen him before on that day?

A. I forgot that. I saw him, I think, about one o'clock. I went to my door right adjoining Ford's theatre on the upper or north side, and saw him on a little horse out on the street talking with a man by the name of Maddox. Booth said, "Is not this a nice horse I have got? It can run like a cat." Just then I started to come out, when he struck his spur into him to show how he could run, and went down on Tenth street. It was the last I saw of him until I saw him go into the box that night.

Q. What part of the play was it when you saw Booth come into the box?

A. I don't know what part. It was the second scene of the second act, I think, of the American Cousin. What part of it I do not remember now. It is something I am not very well posted in.

Q. Did he say anything more at the time you saw him in the afternoon in regard to his horse?

A. That is all he said. I had got almost out to him to the curb-stone, when he started off.

Q. He did not say anything as to how long he had the horse?

Mr. BRADLEY. We are not trying Booth.

The ASSISTANT DISTRICT ATTORNEY. I am aware of that.

Mr. BRADLEY. Then I object to that question.

The ASSISTANT DISTRICT ATTORNEY. Very well, let it go. Give the full name of Mr. Maddox.

A. James Maddox. I do not know his other name. He was employed at the theatre.

Cross-examined by Mr. BRADLEY:

Q. Did you see anybody else on the stage besides Booth at the time?

A. Henry Hawk was on the stage, I think.

Q. He was an actor?

A. Yes, sir.

Q. Who got on the stage next after him?

A. I declare I cannot really tell. I think it was Mr. Stewart.

Q. Was Booth on the stage then, or had he got off?

A. I think he had got off, as far as I can recollect. There was no person on the stage when Booth was on it. I saw Hawk on the stage about the moment Booth had his knife, but I think he was the only one until Booth had passed clear through and out.

Q. Where was your seat?

A. I was right adjoining the private box, in the dress circle. The President was directly opposite where I sat.

Q. Then if a large man had got on the stage while Booth was on it you would have seen him?

A. I could have seen him well enough.

Q. And you did not see any such thing?

A. No one got on the stage while Booth was there. I think no one got on

the stage until Booth was off. The instant he was off Laura Keene was on the stage. In fact there were a half a dozen there in a moment.

Q. He ran directly across the stage and disappeared?

A. Yes, sir; he came down out of that box and ran out across the stage.

Q. Hawk ran off ahead of him?

A. Yes, sir; the very moment he got on the stage Hawk ran off, and then there was nobody on the stage.

Q. Who came on after Stewart?

A. Two or three soldiers, I think; I do not know where they came from.

Q. And you did not see any one close enough behind Booth almost to touch him as he was coming out?

A. No, sir; I did not.

By the DISTRICT ATTORNEY:

Q. But you say there were a good many persons on the stage about that time?

A. Yes; the moment after he pased out.

Q. Did you not see some persons advance towards the stage immediately upon his falling on it?

A. Yes, sir; a good many jumped on the stage.

Q. You do not know Colonel Stewart?

A. Yes, sir; he is a large man. I saw him on the stage, but I do not recollect his getting on the stage until after Booth was off.

By Mr. BRADLEY:

Q. You saw Booth go off the stage?

A. Yes, sir; I saw Booth go off the stage before I saw any person on it.

JOSEPH M. DYE, sworn and examined.

By Mr. PIERREPONT:

Q. State your age and occupation.

A. Twenty-three next August; I belong to the United States army, and am a recruiting sergeant in Philadelphia.

Q. In the regular army?

A. Yes, sir.

Q. Where are you now stationed?

A. I am stationed in Philadelphia.

Q. How long have you been stationed in Philadelphia, or about how long?

A. A little over a year.

Q. Where did you go to Philadelphia from?

A. From New York.

Q. From what place did you go to New York?

A. From my home.

Q. Where is that?

A. Washington county, Pennsylvania.

Q. Were you in the army in April, 1865?

A. I was.

Q. Where was your regiment stationed on the 14th of April, 1865?

A. I belonged to battery C, independent Pennsylvania artillery, stationed at Camp Barry.

Q. Tell me where Camp Barry was.

A. It was at the junction of H street and the Baltimore turnpike.

Q. Give us a description of what direction it was from Ford's theatre.

A. It is out H street.

Q. The same way as the Capitol, except north of the Capitol?

A. Yes, sir.

Q. How far was your camp from Ford's theatre?

A. I presume nearly two miles.
Q. Were you in Washington on the night of the murder?
A. I was.
Q. Was there any officer with you?
A. Yes, sir; Sergeant Robert Cooper.
Q. Is Sergeant Robert Cooper here in town?
A. Yes, sir.
Q. You have seen him lately?
A. Yes, sir.
Q. Have you seen him to-day?
A. Yes, sir.
Q. Where were you on the evening of the 14th, at the time of the murder?
A. I was in an oyster saloon.
Q. Will you state when you went into the oyster saloon, and from what place you went?
A. From Ford's theatre.
Q. At what time in that evening did you come to Ford's theatre?
A. I arrived there about half past nine o'clock.
Q. Who was with you?
A. Sergeant Cooper.
Q. Had you any pass—were you allowed to come there?
A. I had a monthly pass, but I think it was then out of date.
Q. Were you at the theatre?
A. I was in front of the theatre.
Q. Were you sitting or standing most of the time?
A. Sitting.
Q. What were you sitting upon?
A. Upon some plank, or something of the kind, placed there, in order to alleviate persons getting in and out of carriages.
Q. Did you see Mr. Lincoln's carriage there?
A. I did, sir.
Q. What was the condition of the street in front of the theatre that night as to its being light?
A. It was light directly in front of the door.
Q. In what way?
A. There was a large lamp there.
Q. A gas lamp?
A. I cannot swear as to its being gas or oil.
Q. State whether it was light or not.
A. It was light.
Q. Do you remember what the temperature of that evening was, whether it was cold or mild?
A. It was mild.
Q. As you sat there upon this plank, what was Sergeant Cooper doing?
A. Sergeant Cooper was moving up and down upon the pavement.
Q. Did you have any conversation with him while you remained there?
A. Yes, sir.
Q. While you were sitting there, state whether there was any change in the inside of the theatre as to persons coming out at the end of any act?
A. They did.
Q. State what that was, and when.
A. Parties came down—I presume it was about ten or fifteen minutes after we got there—and went into the saloon below and the saloon adjoining the theatre to drink.
Q. Were there quite a number of them?
A. Yes, sir.

Q. As these people came down from the theatre at the time you mention, whom did you see, and what did you hear said in relation to Mr. Lincoln's carriage?

A. Before they came down I heard conversation there.

Mr. BRADLEY. We object to that conversation.

Mr. PIERREPONT. Before you answer that question I will ask you another. State whether you know John Wilkes Booth.

A. I do, sir.

Q. State whether John Wilkes Booth was one of the persons who entered into that conversation.

A. He was.

Q. Now state what it was.

Mr. MERRICK. We object to the question. I will state our objection, unless it is the proper order for the gentleman on the other side to state the grounds on which they offer the declarations of Booth.

The COURT. You may state the ground of your objection.

Mr. MERRICK. The ground of our objection is that they propose now to offer the declarations of Booth for the purpose of affecting the prisoner at the bar. They have established no connection between Booth and the prisoner as yet. I state this objection, not for the purpose of arguing it, but in order that counsel may present the grounds upon which they make the offer.

Mr. PIERREPONT. I present no grounds. It must be apparent, without any sort of argument, that what John Wilkes Booth did in connection with this murder is evidence.

Mr. BRADLEY. We supposed that possibly might be the ground of the gentleman's offer. I take it for granted that whatever John Wilkes Booth may have said or done, unless they connect the prisoner at the bar with John Wilkes Booth in that transaction, is of no sort of consequence. I suppose, if the prosecution are to proceed upon the ground of conspiracy, they must first establish some connection between the two parties; when that is done, how far the evidence may be admissible is another question. But until that is done, although Booth may have killed the President, and fifty other people have been connected with him—until they show that this party was so connected, his declarations cannot possibly be evidence.

Mr. PIERREPONT. We state to the court that we shall connect the prisoner with it.

Mr. BRADLEY. That is an entirely different question. That has never been stated before.

Mr. PIERREPONT. We say it now.

The COURT. Of course, if the counsel for the prosecution fail to make connection of Booth with the prisoner at the bar, what ever Booth said or whatever he did, although he may have committed the murder charged against the prisoner, his declarations could not be testimony against the prisoner.

Mr. BRADLEY. As the gentlemen now put it upon the ground that they expect to connect the prisoner with Booth, it is entirely within the discretion of the court to say whether they will permit testimony to be given until some apparent connection is established. This is an enormous case, and I ask the court whether they are to be allowed to continue the trial of all the parties named in the indictment, through this immense mass of testimony, before they offer any connection of the prisoner at the bar with the transaction, or will your honor advertised beforehand require them to bring forward their evidence connecting him with it.

The COURT. The usual course of proceeding in such case is to tell the counsel that they must use their discretion as to what part of the case they will present any particular evidence in. I always advertise counsel, however, that unless they

connect the defendant with the transaction, the testimony will all be thrown out.

Mr. PIERREPONT. Of course; but I will say, that if the counsel had not interrupted us, we would have connected the prisoner with the transaction, long before this.

Mr. BRADLEY. All I can say is that I interrupted you at the proper time.

The COURT. The court will exercise its jurisdiction in this and every other case, as far as possible, to elicit the truth of the whole matter. If the prisioner at the bar is not connected with the transaction, the testimony will be ruled out.

By Mr. PIERREPONT:

Proceed now and state what you saw done, and what you heard said, by John Wilkes Booth, and with whom he was conversing.

A. The first who appeared on the scene was John Wilkes Booth himself. What first attracted my attention was his conversing with a low, villanous looking person at the end of the passage.

Q. You mean by low, short in stature?

A. Yes, sir; it was but a moment before another person joined them. This person was neat in appearance—neatly dressed—and entered in conversation. This rush came down from the theatre, and as they were coming, Booth said to this other person that he would come out now, as I supposed, referring to the President. They were then standing facing the place where the President would have to pass in order to reach his carriage, and watching eagerly for his appearance. He did not come. They then hurriedly had a conversation together; then one of them went out and examined the carriage, and Booth stepped into a restaurant. At this time all the party who had come down from the theatre had gone up. Booth remained there long enough to take a drink. I could not say whether he did or not. He came around and stood in the end of the passage from the street to the stage where the actors passed in. He appeared in a moment again. This third party, neatly dressed, immediately stepped up in front of the theatre and called the time.

Q. To have no misunderstanding, state what you mean by calling the time.

A. He stepped up and looked at the clock, and called the time to the other two.

Q. That is he stated what it was?

A. Yes, sir.

Q. Where was the clock?

A. The clock was in the vestibule of the theatre.

Q. State how the light was at the time relating to the face of the neatly dressed man who called the time.

A. I did not observe it particularly at that time. As soon as he called the time to the other two, he went up the street towards H street. He did not remain there long, but came down again, stopped in front of the theatre, looked at the clock, and called the time again, looking directly at these two, and seemed excited.

Q. That is, Booth and the other man?

A. Yes, sir. He then immediately turned his heel and went towards H street. It was then I thought something was wrong by the manner in which these three had been conducting themselves, and as a soldier I had a revolver in my pocket with my handkerchief wrapped around it.

Q. What part of it?

A. Around the revolver. We wore artillery jackets, and the revolver was in my breast pocket. My suspicions were so aroused that I unwound my handkerchief from around my revolver. It was not long before he appeared again, going on a fast walk from the direction of H street.

Q. How did he look then?

A. He placed himself in front of the theatre, where the light shone clear on his face. There was a picture on that countenance of great excitement, exceedingly nervous and very pale. He told them for the third time that it was ten minutes past ten o'clock. That is the last time he called it. It was ten minutes past ten o'clock.

By Mr. BRADLEY:

Q. And that was this time?
A. Yes, sir.

By Mr. PIERREPONT:

Q. Did you say that the person said three times that it was ten minutes past ten o'clock?
A. I said he called the time three times, and this time it was ten minutes past ten o'clock.
Q. And the other periods of time were before?
A. Yes sir.

By a JUROR:

Q. He did not state each time that it was ten minutes past ten?
A. No, sir. There were eight or nine, or ten minutes between them. The last time I do not think there were more than five.

By Mr. PIERREPONT:

Q. Did you see that man distinctly?
A. I did.
Q. Very distinctly?
A. I did very distinctly.
Q. Do you see him now?
A. I do.
Q. Can you tell us where he is?
A. I can.
Q. Tell us where he is.
A. He sits there, (pointing to the prisoner.)
Q. Is that the man?
A. It is. I have seen his face often since, while I have been sleeping—it was so exceedingly pale. He hurried up towards H street again, and that is the last I have seen of him until lately.
Q. You say he was the prisoner at the bar?
A. Yes, sir, and I say that I have seen him since, while I have been sleeping.
Q. Did it make a very strong impression from what occurred at the time?
A. It did, sir.
Q. What did Booth do then?
A. He walked directly into the theatre.
Q. Did you call anybody's attention to this at the time?
A. I did.
Q. Who?
A. Sergeant Robert H. Cooper.
Q. Did you point out at the time who Booth was?
(Question objected to by Mr. Bradley and withdrawn.)
Q. Where did Booth then go?
A. He entered the front of the theatre.
Q. Where did you go, and who went with you?
A. Sergeant Cooper and myself went to an oyster saloon. Sergeant Cooper was particularly with me.
Q. How soon after you got into the oyster saloon did you hear of the murder?
A. We had not time to eat our oysters.
Q. What did you do when you heard of it?

A. We did not go to the theatre. We hurried right up H street to the camp. I thought a detail would have to be made, and as I was first sergeant I would have to be there.

Q. Did Sergeant Cooper belong to the same camp?

A. He did.

Q. Did you both go up H street?

A. Yes, sir, we both went up to H street, and out H street.

Q. When you got out to H street, what did you do?

A. We passed out to Camp Barry.

Q. What occurred on the way?

A. A lady hoisted the window of her parlor, and asked ——

(Question objected to by Mr. Bradley.)

Mr. PIERREPONT stated that he would not press the question, and would turn the witness over to the defence for cross-examination.

The court thereupon took a recess until to-morrow at 10 a. m.

TUESDAY, *June* 18, 1867.

The Court met at 10 a. m.

Mr. PIERREPONT said: If your honor please, when the court adjourned on yesterday I had just put a question to the witness Dye, touching what occurred as he and Sergeant Cooper hastened from the oyster saloon up H street, to which question the counsel for the prisoner objected. I withdrew the question for the time, thinking then that I would renew it on the cross-examination. I have come to the conclusion, however, that it would be more orderly to ask the question in the direct, and now propose to do so. I will ask it in such a form that the gentlemen on the other side can take whatever exception to it they see proper. The witness will understand that he is not to answer until the court has ruled upon it.

The question is this:

Q. You stated yesterday that you and Sergeant Cooper hastened up H street. What did you and Sergeant Cooper see as you hastened up H street?

(Mr. Bradley objected to the question as irrelevant.)

Mr. PIERREPONT. We suppose, may it please your honor, that all the incidents and facts that transpired at the time of the murder are proper. We suppose that a signal-light is proper; we suppose that a signal-whistle is proper. Such have always been allowed to be given in evidence. We do not suppose it is necessary to prove that the prisoner gave the signal-whistle, or that the signal-light was displayed by him. I repeat it is our opinion that all the incidents connected with a murder of this kind are proper to be given in evidence, as having a tendency to throw light upon the question being inquired into.

The COURT. It is very difficult for the court to determine at this stage, without knowing what the evidence is, whether it is relevant and admissible. I propose, therefore, to let the answer be given, and then if it be found to in any way connect the prisoner with the transaction—the taking away of the life of Abraham Lincoln—it will be regarded as proper evidence. If not, it will be ruled out.

To this ruling Mr. Bradley reserved an exception.

Examination of JOSEPH M. DYE resumed.

By Mr. PIERREPONT:

Q. Please state what occurred as you and Sergeant Cooper hastened up H street.

A. As we were passing along H street out to Camp Barry, a lady hoisted a window and asked us what was wrong down town.

Q. What did you say, and what did she reply?

A. I told her that President Lincoln was shot. She asked me who did it.

I told her Booth. She asked me how I knew it. I told her a man saw him who knew him.

Q. Will you tell us what was the condition of the moon at that time?

A. I cannot say exactly. I disremember.

Q. Do you know whether it was full or different at the time?

A. It was light enough for us to see some distance on the street.

Q. Do you know whether the moon was up?

A. Yes, sir; I believe it was.

Q. Do you know whether the moon was then at or about the full?

A. I cannot say.

Mr. BRADLEY here interposed an objection to the course of examination being pursued. The witness had answered that he did not recollect what the condition of the moon was, and he did not think it altogether proper to pursue this line of examination further with leading questions.

Mr. PIERREPONT. Very well, sir; I will not press the examination further. The almanac will show what the condition of the moon was on that night.

Q. Please describe this woman who opened the window, and with whom you had this conversation.

A. She appeared to be an elderly lady.

Q. How was she as to being stout or otherwise?

A. I could not say particularly. She resembled the lady on the trial of the conspirators—Mrs. Surratt.

Q. Have you seen the house since?

A. I have.

Q. Do you know the number?

A. I do—541.

Q. Tell the jury which side of the street it is on as you go up.

A. As you go towards the camp—an easterly direction—it is on the right-hand side.

Q. Is there anything peculiar about the house?

A. Yes, sir. I recollect the steps distinctly as they appeared that night.

Q. Tell the jury how the steps are.

A. In order to answer her question I had to go up in the direction of the steps, which are very tall.

Q. Will you state what was the manner of this woman when she thus addressed you?

A. She just asked the question.

Q. State whether her manner was excited or not.

A. I do not recollect.

Q. What then did you do?

A. Passed on out towards the camp.

Q. Did you pass swiftly or slowly?

A. Passed along as on a fast walk.

Q. At the time she opened the window, state whether anybody was ahead of you in the street.

A. There was not. We met two policemen a short distance beyond that, who had not even heard of the assassination. What I mean by that is, that no pedestrians had passed that way.

Q. When you saw Booth and Surratt at the theatre, just before this occurrence which you have now described, was Booth disguised?

A. No, sir. He had a slouched hat on.

Q. Was Surratt disguised?

A. No, sir.

Q. Was the short man who was with him disguised?

A. No, sir. He was a villanous, rough-looking character.

Q. I mean as to the disguise of their dress. Was the dress of any of them disguised?

A. No, sir.

Cross-examination:

By Mr. MERRICK:

Q. What is your age?

A. I will be twenty-three next August.

Q. Where are you from?

A. From Washington, Washington county, Pennsylvania.

Q. What was your business in Washington before you entered the army?

A. I was going to school, and in a printing office before that time. Washington is where I went to school.

Q. Did you go to Washington College?

A. No, sir. I went to what is called Union School, just opposite the college.

Q. When did you leave that school?

A. About a year before I entered the army?

Q. What year was that?

A. 1862.

Q. Then you left the school in 1861?

A. Yes, sir; between 1860 and 1861. I do not exactly remember what time it was

Q. Did you leave the school for the purpose of going into the army?

A. No, sir. I left the school to go with Adam H. Ecker, the editor of a paper there, called the Washington Examiner.

Q. How long did you remain with him before you went into the army?

A. A year and a couple of months, I believe; somewhere in that neighborhood.

Q. What was your business in connection with the paper?

A. I set up editorials and such things as that.

Mr. PIERREPONT. We do not wish to object to any reasonable latitude; but does your honor think it can possibly favor public justice to go into the question as to whether a man wrote, or set type, or did something else? If your honor thinks so, why, of course, I do not want to object.

The COURT. I cannot see that it is of any great advantage either one way or the other; nevertheless, it is responsive to the preliminary question that was put to all these witnesses, as to their age, residence, occupation, &c.

Mr. PIERREPONT. All I desire is, to suggest that there be some reasonable limit to such examination.

Mr. MERRICK. I understand the limit to a cross-examination to be the daguerreotyping of the witness, as far as possible, to the jury.

The COURT. You will proceed with the examination.

By Mr. MERRICK:

Q. Your business was setting up editorials?

A. Yes, sir, and locals, and such things.

Q. Did you write for the paper?

A. No, sir.

Q. I understand you to say that on the 14th of April, 1865, you were stationed at Camp Barry?

A. Yes, sir.

Q. And that, on that night, you came into town?

A. Yes, sir; on that afternoon.

Q. What time in the afternoon did you come in?

A. In the evening, just before dusk.

Q. What time did you have tattoo at your camp?

A. About nine o'clock.
Q. I suppose you were not there at tattoo?
A. No, sir.
Q. What was your position in the camp?
A. I was first sergeant.
Q. Of your company?
A. Yes, sir.
Q. Who called your roll for you at tattoo?
A. The first duty line sergeant generally.
Q. Did you have permission to go into town?
A. I generally came into town whenever I felt like it.
Q. That was your habit?
A. I was quartermaster before, and had a monthly pass. That pass, I believe, was not then quite out of date.
Q. I understood you to say, yesterday, that your pass was out of date?
A. I do not think it was; but I could not properly use it. I should have handed it to the captain.
Q. What did you mean, then, by saying that your pass was out of date?
A. Out of date to me, because I had no right to use it.
Q. Why had you not a right to use it, if it was within date?
A. Because I was promoted from quartermaster to first sergeant, and should, therefore, have handed it in. My duty as quartermaster brought me into town every day, as a general thing, for rations and such things as that.
Q. Do I understand you to say that it was your habit, as first sergeant, to come into town every day, or as quartermaster?
A. As quartermaster.
Q. What was your habit as first sergeant?
A. I generally came into town two or three times a week.
Q. Did you get any permission to come?
A. Yes, sir, often. Our captain was not very strict; he relied upon his men to do their duty.
Q. He relied upon the honor and integrity of his men?
A. Yes, sir.
Q. Did you feel that you were acting worthy of that confidence reposed in you by your commanding officer, in coming into town, and remaining in after tattoo, without permission?
A. No, sir.
Q. What did you come into town for that night?
A. To see the torchlight procession.
Q. What did you go to the theatre for?
A. Because I ascertained the President was to be there.
Q. Did you buy a ticket?
A. No, sir.
Q. You did not, then, go inside of the theatre?
A. No, sir; I did not.
Q. I understood you to say yesterday that you took a seat on some planks that were there?
A. Yes, sir, on a platform. I do not know whether it was composed of planks or not, but I presume it was. It was a platform on which they got in and out of the carriages.
Q. You took your seat on that platform?
A. Yes, sir; with my feet resting on the pavement.
Q. At what hour was that?
A. About nine and a half o'clock.
Q. How long did you remain there?
A. Until ten minutes past ten—a couple of minutes after that.

Q. Did you go into the drinking saloon?
A. No, sir.
Q. Did not you take a drink while you were there?
A. No, sir.
Q. Did you remain seated on those planks all the while you were there?
A. I did. I took my seat there and remained there until I left the place.
Q. Did Sergeant Cooper stay there beside you?
A. No, sir. He walked up and down the pavement.
Q. When and to whom did you first communicate what you observed on that night?
A. I believe I first observed it to my father.
Q. To whom next?
A. No person in particular. I spoke of it in general conversation; (after a pause,) Oh, do you mean my suspicions on that night?
Mr. MERRICK. Yes, sir.
WITNESS. To Sergeant Cooper.
Q. Who did you first tell what you could prove as to what occurred on that night?
A. I did not tell any person any such thing as that; I only told them what I had seen. The first thing I knew I was summoned in town here.
Q. When was that?
A. That was just before the trial at the arsenal.
Q. Who did you see when you came here after being summoned?
A. I went down to the provost marshal's office, and from there to the old capitol prison.
Q. Were you put in the old capitol prison?
A. No, sir, not so bad as that.
Mr. MERRICK: You may thank your fortune for not being court martialed for being out after tattoo?
WITNESS: But discretion is the better part of valor sometimes.
Q. Who did you see at the provost marshal's office?
A. I saw several gentlemen there.
Q. Who talked with you there particularly about what occurred on the night of the 14th of April?
A. The officer who was on duty.
Q. Who was he?
A. He was a colonel. I do not know what his name was.
Q. What were you sent up to the old capitol prison for?
A. To see if I recognized the villanous looking person, or any of the parties in front of the theatre.
Q. Were you ever examined by any one before you testified at the military commission?
A. No, sir; some questions were asked me at the provost marshal's.
Q. Was that the only time any questions were asked you by any officer or person in authority?
A. To the best of my knowledge it was.

By Mr. BRADLEY:

Q. And that was by the colonel?
A. By the officer there; I believe he was a colonel.
Q. Had he not a uniform on?
A. His coat, I believe, was not a uniform one.
Q. What rank had he on his shoulder?
A. He had a military blouse on. To the best of my knowledge he was a colonel. I heard him addressed as colonel. Whether he was only a lieutenant colonel or a full colonel I do not know.

By Mr. MERRICK:

Q. Were any photographs shown you at the provost marshal's office?

A. No, sir.

Q. Did you see any there?

A. No, sir: they were busy sending out for different persons in town. There was a coat brought in there, I remember.

Q. Were any photographs shown you before you testified at the trial before the military commission?

A. There was not.

Q. When did you arrive in town?

A. Last Monday a week.

Q. When were you here last before that?

A. I was here the 10th.

Q. Before the 10th, when were you here?

A. I was here in March, I believe.

The COURT. The 10th of what?

WITNESS. When the court met before and the case was postponed.

Q. Were you here in March?

A. Yes, sir; I believe it was March. I am confident it was March.

Q. Who did you talk with when you came here last about your testimony, on the 10th of March, as you say?

A. I talked with General Carrington.

Q. Any one else?

A. Mr. Wilson, sometimes.

Q. Any one else?

A. No, sir.

Q. Sergeant, in looking over your testimony of yesterday, I observe that you give quite a succinct narrative of what transpired on the night of the 14th of April; mention the name of Booth; speak of a villanous-looking person, and then speak of a third party neatly dressed. You describe the latter throughout as the "third party neatly dressed." Can you give any reason to the jury why you did not mention his name in the first instance? You knew who he was.

A. I did not think it was necessary until I was called upon to point him out.

Q. You knew his name?

A. I knew his name after I had seen him.

Q. You knew his name when you took the stand yesterday?

A. I did.

Q. Why, then, did you not use his name instead of referring to him as the "third party neatly dressed?"

A. Because I did not think it was necessary until I was called upon to point him out.

Q. Did you think it was necessary to use Booth's name?

A. I used it just because I deemed it necessary in my own mind.

Q. Why did you deem it necessary in your own mind to use one name and not to use another?

A. I did not think it was necessary to use the other name until I was called upon to identify him.

Q. Were you not told not to use his name?

A. No, sir; I was not.

Q. Please tell us what was the position of these three men when you first observed them?

A. Just as I gave it yesterday; Booth was speaking to this rough, villanous-looking person, and just then this third party appeared.

Q. How long was that after you had taken your seat upon the planks?

A. Very soon.

Q. Five or ten minutes?

A. No, sir, not that long.

Q. Tell the jury where Booth and this villanous-looking person were standing when you first observed them.

A. Below the door next to Pennsylvania avenue, just at the entrance between the saloon and the door of the theatre where you enter the vestibule.

Q. How far from the wall of the building?

A. Close to it.

Q. How wide is the sidewalk?

A. I presume some fourteen feet.

Q. Where did this neatly-dressed third party come from when he joined the two?

A. I cannot say.

Q. From which side did he approach them?

A. I do not know. I did not see him until he was right in with them.

Q. How long did they stand there together?

A. For some time.

Q. About how long?

A. Until that man began to call the time.

Q. How long about did they stand there?

A. I presume they were all three of them together there about ten or twelve minutes.

Q. At that time?

A. They were never together afterwards—all three of them.

Q. I want to know how long they remained there together conversing?

A. Well, I suppose ten or twelve minutes. It might not have been that long.

Q. Did they talk loud enough to be overheard?

A. No, sir; only Booth in using the expression to which I have referred.

Q. Did they speak in a whisper?

A. They did.

Q. Was the expression you speak of made use of by Booth while the three were standing there together?

A. Yes, sir.

Q. Was it made before any one of them had examined the carriage?

A. Yes, sir.

Q. Then, as I understand you, you now tell the jury the two were talking together when the third joined them; and that that was the first time you observed them, and that the three remained together ten or twelve minutes?

A. Yes, sir.

Q. All you heard was the exclamation of Booth, "He will come out now."

A. Yes, sir.

Q. And that up to that time nothing else had occurred except their being together and talking?

A. No, sir.

Q. When Booth made this remark what did they do?

A. The rush was then coming down.

Q. Let us have the remark.

A. "I think he will come out now."

Q. What did they then do?

A. They lined themselves below the door; that is, towards Pennsylvania avenue. They were below the door facing the space the President would have to pass in, in order to reach his carriage.

Q. They were then below the door, towards Pennsylvania avenue, fronting F street?

A. Yes, sir; looking up in that direction—just facing the passage from the door to the carriage.

Q. You were still occupying your seat?

A. I was.
Q. In what order did they stand?
A. They stood facing that space.
Q. Who stood nearest the theatre.
A. The villain.
Q. Who stood next?
A. I do not recollect; I think, though, it was Booth.
Q. Who stood next?
A. The third party—John H. Surratt.
Q. You cannot be mistaken in what you have said about their position?
A. Not at all.
Q. I understood you to say yesterday, that when Booth said, "I suppose he will come out now," you supposed him to refer to the President?
A. Yes, sir.
Q. Why did you suppose so?
A. Well, I presumed so. I was not any ways excited then myself, and I thought they were speaking just as other persons would who were anxious to see him.
Q. You had, however, observed them, had you not?
A. Yes, sir; particularly on account of Booth holding conference with that villain.
Q. That was what first attracted your attention?
A. Yes, sir.
Q. To see a gentleman talking with so villanous-looking a man?
A. Yes, sir.
Q. Did you also observe them particularly when they were lined?
A. I saw them in their positions. Some of the parties coming down out of the theatre passed between some of them.
Q. After you got them into line, what occurred next?
A. President Lincoln had not appeared, and these parties who came down after a drink, went up again.
Q. What did the three men do?
A. Booth stepped into the saloon adjoining the theatre in the direction of Pennsylvania avenue.
Q. What did the villanous-looking man do?
A. He remained in position near the passage.
Q. In or out of the theatre?
A. Out of the theatre, right against the wall. He never changed his position while I observed him.
Q. What did the man you called Surratt do?
A. He walked out and looked at the carriage in the rear.
Q. Did he walk around the carriage?
A. He went into the rear of it, and nearly stumbled over my foot as he was passing me.
Q. What did he do then?
A. He came back again. Booth in the mean time had come out of the saloon, and stepped into the passage. Surratt then joined them, and as Booth appeared from the passage, Surratt stepped up to the clock and called the time.
Q. Where was that clock?
A. In the vestibule of the theatre, opposite the door.
Q. Whereabouts in that vestibule?
A. I cannot exactly describe that. I know the clock was there, that is all. I think it was right above the "delivery of tickets," if I am not mistaken.
Q. Did you see it?
A. I have seen it. I could not see it just exactly as I sat then.
Q. Was not the clock right opposite the door?

A. It was as you went in the vestibule.
Q. There is a door that leads into the vestibule?
A. Certainly.
Q. You walk into the vestibule and then see the clock right in front of you?
A. Yes, sir.
Q. This man whom you call Surratt, you say, stepped up to the door and looked at the clock?
A. Yes, sir; and called the time.
Q. What did he do then?
A. He walked up towards H street.
Q. The villanous fellow still retained his position?
A. Yes, sir.
Q. What did Booth do?
A. He stood in conversation with him.
Q. How long a time passed from the time when they lined themselves opposite the space where the President was to pass, and the time this man called the time?
A. About five minutes.
Q. They then lined themselves, and this man Surratt examined the carriage?
A. Yes, sir.
Q. He went up and joined Booth when he returned from the passage, and that occupied five minutes?
A. Yes, sir.
Q. He then went up the street?
A. He did.
Q. And Booth remained talking with the villanous-looking man?
A. He did.
Q. How long was it before this man whom you call Surratt returned?
A. It was very soon. I cannot state the time exactly. It might have been some five or ten minutes. I think it was at least five minutes.
Q. Did he go up the street, or did he go in the alley-way that leads back into the theatre?
A. No, sir; he went up the street.
Q. He then returned?
A. Yes, sir.
Q. What did he do when he came back?
A. He immediately stepped in front of the theatre again, and looking in the vestibule called the time to those two.
Q. Where were those two standing?
A. In the same position, just below the door towards Pennsylvania avenue.
Q. What did he do after he called the time?
A. Turned on his heel and started up the street again.
Q. Did he speak to them?
A. He just directed the time to them. He was very much excited. That was the first time my suspicions were aroused of there being anything wrong—the manner of those two conversing there, and his coming down again and calling the time to them.
Q. In what manner did he attract their attention?
A. The moment he appeared they observed him, and he hallooed the time to them.
Q. How do you know they observed him?
A. They looked at him.
Q. Did he look at them?
A. He did.
Q. Did he speak to them?
A. He called the time to them.

Q. Did he address them?

A. He could not, from where he stood, without having his private matters heard.

Q. That is your conjecture?

A. That is my conjecture, and my conjecture, I believe, is right. I have not the least doubt of it.

Q. He did not, however, in point of fact, address them?

A. He just told them the time in a very excited manner.

Q. And you said he could not address them because their private matters would thereby be revealed?

A. He could not address them unless he wanted to be heard by persons all around them. Men engaged in such plots are generally disposed to be a little smarter than that.

Q. Did it never strike you that it would have been more consistent, if he was engaged in a plot like that, for him to have looked at the time and whispered it to them?

A. I think there was something up H street that attracted his attention as soon as he called the time to them. He may have been conferring with Payne, at H street, for all I know.

Q. Don't you think it likely he was?

A. I do not know; I have my own conclusions.

Q. Then you account for his failure to carry out what would have been the ordinary course of a man in a plot of that kind—that is, to have looked at the time and whispered it—on the ground that there was something up H street that attracted his attention?

A. That is why he hurried up there.

Q. Is that the reason why he called out the time in a loud voice?

A. I believe he was regulating the time for Booth, Payne, and the whole of them to strike.

Q. He was a general commander?

A. Yes, sir.

Q. Did you dream that?

A. No, sir.

Q. If he was regulating the time for all these men, who else was there within the scope of your observation who could hear him call the time?

A. No one else.

Q. How far is it from the theatre up to H street?

A. Two blocks, I believe. He just had time, in my estimation, to walk up there in a rapid manner and get right back again in time to call the last time.

Q. Did you see him when he went across F street?

A. No, sir; I could not.

Q. It was moon-light, wasn't it?

A. The light was there right in front of the theatre, and it kind of blinded one in looking up in that direction.

Q. There is one point in regard to which I don't distinctly understand you, and I desire to do so. I asked you whether it was not more consistent that he should have looked at the time, and gone and whispered to these men, than to have hallooed out? You say you think it was because he was regulating time for some persons up H street.

A. That is my opinion.

Q. How did his calling out the time so that other people could hear it, help to regulate the operations on H street?

A. They could not hear it on H street.

Q. What did he call it for, then?

A. For Booth.

Q. But you say that it would have been more natural that he should have whispered it?

A. I said that, did I? He appeared to be in a very great hurry, and hadn't time to whisper. He did not take time to go right to them, but stood there and hallooed it.

Q. And then hurried up in the direction of H street?

A. Yes, sir; I cannot say that he went clear up to H street, but I know it just took him as much time as would be required to walk those two blocks and back again in a rapid manner.

Q. He was a neatly dressed gentleman?

A. He was.

Q. Most gentlemen who are dressed as neatly as you say he was carry a watch, do they not?

A. I have seen cases where they did not.

Q. Don't you think that a conspirator, moving upon time and seconds, would be likely to carry a watch for the occasion?

Mr. PIERREPONT interposed an objection to the present line of examination. It was not the opinions, but the facts within the knowledge of the witness, that were wanted.

Mr. MERRICK stated that the witness had given an opinion, and he thought it but fair to show how that opinion arose—its absurdity, and the bias that induced it. However, he would not pursue the examination on that point any further.

Q. He did not speak to them?

A. He just spoke the time, and then hurried up towards H street.

Q. How long a time elapsed from the time of his appearance until the time of his disappearance on this second occasion?

A. At the rate he was going, which was very fast, just about the time that it would have taken him to have walked from there to H street.

Q. Five minutes?

A. Well, you can judge of the time it takes to walk two blocks as well as I can. He was walking as fast as he could walk.

Q. You say your suspicions were very strongly excited?

A. They were at that time.

Q. Was it then that you undid your handkerchief from around your pistol?

A. It was at the time of the second calling that I undid my handkerchief from around my pistol.

Q. What did the other two do after he left there, subsequent to the second calling of the time?

A. They remained there.

Q. In the same position?

A. Yes, sir, and in deep conversation.

Q. How long a time elapsed before he came again upon the scene?

A. I believe it was not as long as before.

Q. What then occurred?

A. He then called ten minutes past ten o'clock.

Q. Where was he?

A. Just where the light from the vestibule shone plain on his face.

Q. Was there anybody else about there at that time?

A. Sergeant Cooper.

Q. Anybody else?

A. Yes, sir; some others, but I can't recollect how many. I was paying very strict attention to those movements.

Q. When he called the time the third time, did he stand in the same relative position to these men and the door as when he called the second time?

A. Just about the same; but this time he was very nervous and excited, and

looked directly in the face of Booth. My suspicions were so aroused that I observed him very closely—even the movements of his lips, which were thin and pale. It was that face in that order that I afterwards saw in my dreams.

Q. How far was he from Booth?

A. About seven feet.

Q. Booth was down between him and the avenue, was he not?

A. Just below the door there.

Q. Was he on a line with Booth?

A. The two men were standing against the wall, and he was standing there in conversation with them. You can judge the distance. The rough had his back against the wall, with his face turned towards the outside of the street—towards the curbstone. Surratt was in front of the entrance of the theatre, standing a little nearer to the theatre, just on a line with Booth and the villain.

Q. But one was standing against the wall, and the other was fronting him?

A. Yes, sir; Booth was a little further out than he was. I presume, if a bee line had been drawn, Booth would have been found to be a little further out towards the curbstone than he was.

Q. What did he do after he called time on this third occasion?

A. He made a very rapid disappearance up towards H street.

Q. How was this man's beard?

A. He had no beard. He had a moustache, but that was a very small one.

Q. The light shone full on his face from the vestibule?

A. Yes, sir.

Q. As he looked at the clock?

A. Yes, sir.

Q. It was then you saw him?

A. Yes, sir.

Q. Do you tell the jury it was then you saw him, and yet you did not change your place since you originally took it on the curbstone opposite the vestibule? That you could see his face when he was standing between you and the light, and looking at the clock which was in front of him?

A. I could see him very readily.

Q. Through the back of his head?

A. No, sir; I was sitting kind of below the point where he was standing, near the very end of the platform, and looking in the same direction that he was—only his face was turned a little more towards the wall than mine was. I could see his face very readily.

Q. How far were you from him?

A. I was about on a line with those other two.

Q. Those other two were standing between the door that leads into the theatre and the door that leads into the restaurant?

A. Yes, sir.

Q. How wide is the space between the door that leads into the theatre and the door that leads into the restaurant?

A. I presume some fifteen feet. It might not be that much.

Q. I understood you to say, yesterday, that there was pictured in that countenance great excitement and nervousness?

A. Yes, sir; and there was.

Q. Had you ever seen John H. Surratt up to the night of the 14th?

A. Never, to my knowledge.

Q. When did you next, after that, see this individual whom you call John H. Surratt?

A. I saw him here in Washington.

Q. When?

A. I saw him the first time I was called here on this case.
Q. When was that?
A. In March, I believe.
Q. Where did you see him?
A. In prison.
Q. How did you get in prison to see him?
A. I was admitted there.
Q. Who admitted you?
A. I was admitted by order of General Carrington, I believe.
Q. Who did you go to jail to see?
A. The prisoner said to be Surratt.
Q. You were shown into Surratt's cell?
A. I was shown into a hall where there was a man walking. He was not in irons or anything of the kind, but loose, walking along.
Q. How long did you remain there?
A. I remained there ten or twelve minutes in conversation.
Q. Did you tell him what you came for?
A. I did not.
Q. Did you represent to him that you knew him?
A. I spoke to him; said, "Halloo, John." That was after I had looked at him. He was at the far end of the hall, and as soon as I spoke to him he came towards me.
Q. Have you seen him in your dreams since then?
A. No, sir. When I spoke to him I saw the same excited and pale countenance that I had after the assassination in my dreams. That convinced me beyond any doubt. The man I saw in prison I can say positively was the owner of the face I saw in front of Ford's theatre on the night of the 14th of April; and this is the man here. There is no doubt about it.
Q. Do you think you would have known him if you had not seen him in your dreams?
A. Yes, sir. His face is as peculiar as my own—once seen not easily forgotten. I have a great memory in regard to faces.
Q. How often have you dreamed of him?
A. Several times, while I was thinking over the occurrence.
Q. Did you ever dream of Booth?
A. I have seen the whole occurrence in front of the theatre. I have seen Booth among the rest of them.
Q. How often have you dreamed of Booth?
A. I have always seen him at the same time.
Q. Did you ever dream of one without dreaming of the other?
A. No, sir. Sometimes Surratt's face has been pictured to me alone when I have been in a deep study.
Q. Then you dream of him when awake as well as when asleep?
A. Yes, sir. Sometimes I have had his countenance pictured fairly before me.
Q. Is it generally accompanied with others?
A. No, sir.
Q. Is he looking at you when you dream of him, or looking at somebody else?
A. He is always looking exactly in the direction in which I saw him, and in precisely the same attitude. If I had met him on the street I would have known him at once.
Q. Why, then, did you deem it necessary to go to his cell if you could have recognized him so readily among others?
A. I went there by request.
Q. Did not you ask to go?

A. No, sir.

Q. Did not you request to see him?

A. No, sir. They told me I had better go there and see whether I would recognize him?

Q. What did you say?

A. I told them I would go.

Q. Did you know Booth?

A. I did.

Q. How long had you known him?

A. I had known Booth during my stay here in Washington. I was here in Washington nearly the whole of '64.

Q. Were you on social terms with him?

A. No, sir. I had seen him at the saloon. I was on social terms with the bar-tender of that saloon below the theatre.

Q. In your dreams of Booth have you ever seen him in any other position than that in which you saw him that night?

A. No, sir. The one who attracted my attention more particularly than did Booth was the villain?

Q. What is your religious faith?

A. I am a Protestant.

Q. Of what denomination?

Mr. PIERREPONT. I must object to that.

Mr. MERRICK. I will waive the question. I thought it possible that he was a Swedenborgian.

Mr. PIERREPONT. We don't desire to bring religion into this case in any way.

The DISTRICT ATTORNEY. I have no objection to the witness disclosing his religion, but we object upon principle to introducing any religious inquisition into a court of justice.

Mr. MERRICK. I have no purpose to introduce religious inquisition, nor to follow your example in any particular.

The DISTRICT ATTORNEY. I think that remark is entirely without foundation.

Mr. PIERREPONT. I hope we shall avoid all such controversies, and try this solemn case in a solemn way.

Mr. BRADLEY. Well, we are all solemnized now. Let's get on.

Q. Have you ever had any communication with spiritual mediums?

A. No, sir. I don't believe in such foolishness as that. I cannot say that I am a firm believer in dreams, but I have often seen things in my dreams that I have seen before.

Q. Don't you often in your dreams have things presented to you which are to happen, and then have those things happen?

A. I do not know that I have. I do not put any trust in dreams of events that are to happen?

Q. But have you not seen things in your dreams that had not then happened, but which did afterwards happen? Have you not been in positions in your life which were familiar to you when you thought of the past, and yet in which you had never really been before?

A. I have dreamed I was married, but I was not married. I was afterwards, however.

Q. Did you see the vision of the bride in your dreams?

A. Well, I saw the person I had communication with—that is all. It did happen that I got married.

Q. To the same person presented before you in your dreams?

A. Yes, sir.

Q. Then there are some of your dreams which tell of the future as well as the past.

A. Yes, sir; but I never put confidence in them, or allow them to bother me.

Q. But they obtrude themselves upon you sometimes, do they not?

A. Not materially.

Q. But they do to some extent?

A. That is the only case.

Q. Don't you find that you sometimes have a dream recalled which it is difficult for you to shake off?

A. When I dream of falling from any height, or anything of that sort.

Q. I mean the next day?

A. I simply think of it as a horrible dream—that is all. It soon goes away; generally after breakfast.

Q. Did you say you were examined at the conspiracy trials.

A. I was.

Q. Did you state there that you knew Booth?

A. I have known him by sight. I believe I stated on the occasion of that trial that I knew him. A photograph was handed me, and I told them that was Booth.

Q. Did you state to that commission that the man, or one of the men, you saw conversing there that night was J. Wilkes Booth?

A. Yes, sir.

Q. I understood you to say that after these three parties lined themselves opposite the space the President was to pass, the man whom you called Surratt went out to examine the carriage, and stumbled over your foot?

A. Yes, sir.

Q. After it?

A. Yes, sir; that is, after President Lincoln didn't come down.

Q. Did you state on your examination before the military commission that one of the three parties had been standing out, looking at the carriage, on the curbstone, while you were sitting there, and then went back; that they watched awhile, and the rush came down; that many gentlemen came out and went in and had a drink in the saloon? Then, aftey they went up, the best dressed gentleman stepped into the saloon himself; remained there long enough to get a drink, and came out in a style as if he was becoming intoxicated? Is that your testimony?

A. That is my testimony?

Q. Then, in this testimony, you state that the examination of the carriage had been made before the rush came down, and "before the President did not come down as they seemed to expect." In your testimony now, as I understand you, you say that it was "after he did not come down, as they seemed to expect," that the examination of the carriage was made?

A. Yes, sir; the rush was a long time coming down. They did not all come down at once.

Q. Then you think these are harmonious statements?

A. Yes, sir; that is correct. I have thought more deeply over it, and have figured it out since the best I could.

Q. This testimony, then, before the military commission is not correct, and what you now state is correct?

A. I see nothing wrong in it.

Q. Then why do you say you have thought more deeply over it since?

A. I have not changed it materially.

Q. Is your mind the same now that it was when you testified down at the arsenal?

A. It is a little clearer now.

Q. In what particular is it a little clearer?

A. In the transactions in front of the theatre.

Q. Then wherein does your recollection differ now from what your recollection was at the time of that trial, with regard to the examination of the carriage?

A. Not any at all.

Q. Then it is no clearer as to that?

A. It is a little clearer.

Q. Then, if it is a little clearer, in what particular is it a little clearer?

A. There are little incidents that I did not think of before.

Mr. MERRICK. I am not calling your attention to any little incidents. In your examination before that commission you stated that a man had been standing out and examining the carriage before the time when they expected the President to come down. You now state that the man went out to examine the carriage after the time they expected the President to come down. Which is correct?

A. It was all about the same time. I can say that my testimony now, and then, is just the same. I believe he was out there just immediately as they commenced to come down. I know he was there, and know it from the fact of my foot being in his way. I have thought deeply over this, and every particular.

Q. How large a man was J. Wilkes Booth?

A. He was a tall man—a heavier man, a great deal, than Surratt.

Q. How tall was he?

A. As tall as I am.

Q. How tall are you?

A. About five feet eleven; I was five feet ten and a half some time ago—guess I am eleven now.

Q. How large was the mean-looking man; you say he was rather low in stature?

A. Yes, sir; just such a man as Edward Spangler.

Q. Without the moustache?

A. Yes, sir.

Q. Are you as confident about the identity of Spangler, as you are about the identity of Surratt?

A. No, sir; the shade of the wall, you know, kind of hid Spangler. He was leaning against the wall; the light did not strike exactly there.

Q. Did you, or not, testify before that commission to this effect: That after Booth (the well dressed man as you call him in this report) came out from the saloon, he stepped up and whispered to this ruffian, (that is, the miserablest one of the three,) and then went into the passage that leads to the stage from the street; then the smallest one stepped up and called the time?

A. That was my testimony then, and it is my testimony to-day.

Q. That the smallest one of the three called the time?

A. Yes, sir.

Q. Did you state before the military commission, when asked to describe the third party, as is reported here: "He was better dressed than any I see here. He had on one of the fashionable hats they wear here in Washington, with round top and stiff brim. Q. Can you describe his dress as to color and appearance? A. No, sir, I cannot describe it. Q. How was the well dressed man as to size? A. He was not a large man—about five feet six inches high." Did you state that?

A. Yes, sir; from sitting down. That is what I judged from.

Q. Do you now state that the man that called the time was five feet six inches?

A. No, sir; but from my position, sitting down on the curbstone, I should have judged him to be five feet six or seven inches. I paid no particular attention to that, so as to be able to judge exactly his height.

Q. He was not a large man then, but is a large man now. The man you saw has not changed so much as that, has he?

A. I call a man a large man if he be only five feet high, if he is heavily built.

Q. But this was an inquiry as to his height, and you answered five feet six inches?

A. Yes, sir; that is what I thought; I was sitting down; I did not intend to be very precise in describing the size of the man. What I meant by the smallest man was the slimmest one.

Q. You then knew that Booth was 5 feet 10½ or 11 inches; and you then testified that the smallest man of the three called the time?

A. I was not so confident of Booth being 5 feet 11 inches. I thought he was somewhere about my own size.

Q. When you said this man was the smallest man of the three, did you mean that he was the slimmest man of the three?

A. I meant he was the lightest man.

Q. Now, I will ask you this question: According to your recollection of the appearance of those men there that night, was there not of the three men one or two who were over 5 feet 6?

A. Well, I am a better judge now than I was then.

Q. Why so?

A. Because I have measured men every day.

Q. Has that been your business?

A. Yes, sir.

Q. How so?

A. As recruiting sergeant; I have to take the heights of the men. Then I was no judge at all. I was then not observing the height of the men particularly, but what they did and said.

Q. You say you stated to the military commission that the man who had such a villanous look was the shortest, but yet the heaviest man of the three?

A. No, sir; I said that at the provost marshal's office.

Q. Did they write it down there?

A. I do not know. They sent me up to the Old Capitol prison to identify him. I pointed out Edward Spangler as the man. He was among others who were brought up. Sergeant Cooper was present.

Q. Was he the smallest one?

A. He was the largest man, although the shortest, in my way of speaking.

Q. Did you testify before the military commission as follows: "Q. About how high do you think the man dressed in slouched clothes was? A. He was about 5 feet 8 or 9 inches high"?

A. I believe I did.

Q. Then did you not testify at the same time that the genteelly dressed man was 5 feet 6 inches?

A. Yes, sir.

Q. Then if you did that, was not the man with the slouch hat the larger of the two?

A. Yes, sir; he was larger in proportion. I mean by large, a man who is stout and heavy; not that he is the tallest. I will say here that I had not a good judgment of the man against the wall; because he was in a leaning attitude.

Q. I understand you to say that Booth was taller than the man who called the time?

A. No, not particularly. I did not pay much attention to the height then; but now, since I have looked at it, I do not believe there is much difference in the height.

Q. Looked at what?

A. At the position of the men; at the position they had occupied.

Q. You mean, then, since you have looked at John Surratt?

A. No, sir; I mean since I have been in the habit—since it has become my businesss to measure the height of men.

Q. Did you state to the military commission that you paid no particular attention to their heights?

A. No, sir; I only gave what I supposed to be their heights.

Q. Can you account to this jury for the fact that when you were called upon to speak of this man before the military commission, you should have picked out from the three one, and said the smallest one called the time?

A. I called him the smallest man because he was so thin.

Q. Then afterwards you stated that he was five feet six?

A. I stated that was my judgment.

Q. You say now that Booth was five feet ten and a half or eleven, and the other, Spangler, five feet eight?

A. I could not on my oath say how tall Spangler was, because he was leaning against the wall and not straightened up.

Q. Can you tell us why, when you said the smallest man called the time, you did not explain to the commission that you referred only to heft and not to height?

A. Because it was not necessary.

Q. Then you told the commmission that the smallest man of the three called the time: that he was five feet six; the other five feet eight, and the other, again, five feet ten, and never explained that you did not mean the height?

A. No, sir; with regard to the man standing against the wall I could not tell what his height was, but I judged him to be the height mentioned there, when straightened up. I did not consider my judgment then as to height worth anything at all; now, however, I do.

Q. If you knew John Wilkes Booth at the time of the trial before the military commission, why did you not tell the commission that it was Booth whom you saw there that night?

A. They gave me the picture in order to have me satisfy myself before them that that was the man.

Q. Then you did not tell them that it was Booth you saw talking there?

A. Yes, sir; I did.

Q. How did you tell them?

A. I told them it was Booth who came out of the restaurant. They showed me his photograph, and I told them that was the man to whom I referred.

Q. Did not they show you that photograph at the provost marshal's office before going down to the military commission?

A. They did not.

Q. Let me ask you if this is correct—

"Q. How was the well-dressed man as to size?

"A. He was not a very large man—about five feet six inches high."

Did you testify to that?

A. I did; but I had no reference to height.

Q. Then why did you say "five feet six inches high?"

A. I put that in afterwards. I meant that he was not a very large man. A man forty-four inches across the breast is a large man, in my opinion, if he be only five feet four inches in height.

Q. When you were examined before the military commission did you see there present the same man who had examined you at the provost marshal's office?

A. No, sir; not to my knowledge. I did not get to see the cross-examiner at all. The man who was cross-examining was sitting in the rear of me. I was not allowed to face him at all; I faced the major generals. The questions were asked me from the other side.

Q. Did you, in your examination before the military commission, give any description of the individual—the third party—whom you now call John H. Surratt?

A. I did.

Q. Did you say then anything about the light shining on his face?

A. I cannot now recollect whether I did or did not say anything about the light.

Q. Did you say anything about his pale face?

A. I have not read my testimony over for some time.

Q. I am not asking whether you have read your testimony or not, but as to what you testified to.

The COURT. Mr. Merrick, do you propose in the cross-examination of each of these witnesses to take up the testimony delivered somewhere else, and go through it *seriatim*, and inquire why they did not say this, and why they did not say that?

Mr. MERRICK. No, sir.

The COURT. If there is anything in regard to which you wish to contradict the witness, the proper way is to lay the foundation by asking him whether he said so and so. That is the usual rule. We will never get through in this way. You have now been two hours examining this witness.

Mr. MERRICK. I think it was very profitably spent, your honor, although it may appear rather self-complimentary to say so. I do not wish, sir, to transgress any rule, but to keep entirely within proper limits.

The COURT. I do not object to considerable latitude, but the cross-examination ought to be kept within bounds, and with some regard to the general rules of evidence on the subject.

The court here took a recess for fifteen minutes.

AFTERNOON SESSION.

Cross-examination of Sergeant DYE continued:

By Mr. MERRICK:

Q. Will you state whether there was anything else that excited your suspicions except what you have already told the jury?

A. No, sir.

Q. At what time in the relation of incidents did your suspicions become excited?

A. At the second calling of time.

Q. It was then you undid your pistol?

A. Yes, sir.

Q. Did you think it anything remarkable to see Booth about that day?

A. No.

Q. It was only remarkable, as I understand you, that a well dressed man should have been conversing with so villanous a looking man?

A, Yes, sir.

Q. I desire that you will describe to the jury, as near as you can, the location of that clock?

A. To my recollection, just as you went into the theatre, you look right before you and you will see it. To my mind the clock was right in front of you in the vestibule.

Q. Right in front of the middle door, was it?

A. That is my recollection; it was right square up before you as you go in.

Q. You could not see it from where you were sitting?

A. No, sir; I could not see inside the door.

Q. You were sitting on the edge of the plank, as I understand; was the carriage above or below you?

A. The carriage was above me—the rear part of it.

Q. Which way were you facing as you sat on the platform?

A. Facing the theatre.

Q. You have said that you went afterwards to take some oysters; please to tell the jury what was the nature of the suspicion you had?

A. I thought there was something wrong going on, or that was not right.

Q. Of what nature?

A. I thought it was something against the President, but I could not say. The excited manner of the man calling the time and his frequent whispering there was what attracted my attention.

(Objection by district attorney that the suspicions of a witness are not admissible. Much latitude is to be allowed in cross-examination, but counsel for the defence have transcended the discretion allowed even upon cross-examination.

The court said there was no objection to a witness stating as a part of the *res gestæ*, that certain actions of other parties excited suspicion in his mind, but it was inadmissible to examine him as to the nature of those suspicions.

Mr. Bradley admitted that the question would be inadmissible on an examination in chief, but held it to be within the legitimate limits of cross-examination.

The court ruled the question to be inadmissible.

Exception to ruling taken by counsel for defence.)

Q. You went, as you have stated, to the oyster-house; what did you do after you went there?

A. Ordered oysters.

Q. What next?

A. We sat down to eat them. I do not recollect whether we ate all of them or not; I do not think we did. A man came rushing in and said the President was shot.

Q. What did you do then?

A. We immediately got up and started for camp.

Q. Why did you go out to camp?

A. We went out to camp because we did not know but there would be a detail made of a guard.

Q. Was that all you did after you started out of the oyster-house?

A. Yes, sir; we hurried out to camp. I was the first one who told General Hall, after I got there, that the President had been shot.

Q. How came you to tell this lady at the window on H street that Booth had shot the President?

A. The man who came into the saloon said it was Booth. It confirmed my suspicions immediately, and I so spoke to Sergeant Cooper, that I was right in my suspicions in front of the theatre of their actions.

Q. Have you ever testified to that before in any of your examinations? Have you ever stated this affair on H street?

A. I have not. This occurred to me a long while afterwards. I never knew where the Surratt's lived until within three months.

Q. It occurred to you after that trial?

A. O, yes; after I ascertained they lived on H street, I asked where the house was, and since I have arrived here I went to the house, and the house was familiar to me.

Q. I understand you to say that the lady you saw then resembled the one you saw at the conspiracy trial?

A. Yes, sir.

Q. Did that strike you when you saw her at the conspiracy trial?

A. No, sir; it did not.

Q. When did it first strike you?

A. Since I learned of the house on H street,

Q. Did not you know the house on H street at that time?

A. No, sir; I never knew it until I came to this city lately.

Q. Then it never struck you that the lady you saw at the conspiracy tria

resembled the lady you saw on H street, until you learned that Mrs. Surratt's house was on H street?

A. Not until I learned that she lived there, and the relation of the house to the incidents that had occurred.

Q. How long after the trial was that?

A. Some time after. Since I came back to the city.

Q. You did not know at the time of the trial that Mrs. Surratt's house was there?

A. No, sir, I did not.

Q. What recalled this to your mind?

A. When I learned that her house was on H street, after I came back to Washington.

Q. Two years afterwards?

A. Yes, sir; I remember that she was an elderly lady.

Q. Then you saw Mrs. Surratt on the trial, as I understand you, within two or three weeks of the occurrence on H street, and it never struck you that she resembled the lady who looked out of the window that night?

A. No, sir; it was when the question was raised in the press of the country that Mrs. Surratt had been condemned unjustly that all this came into my mind about her. I learned that she lived on H street, and I remembered the person asking what was going on down town, in a state of excitement, although no person had passed that way. I thought it was a person who knew something was coming off down town; that is it. I believe it in my own mind, too, that she knew all about it, and was waiting with a dim light in the parlor.

By Mr. PIERREPONT:

Q. You stated in your cross-examination that your judgment two years ago about men's height was not of any value, but that it is now of considerable value; why is it of greater value now than it was two years ago?

Question objected to by Mr. Bradley as having been already answered.

Mr. Pierrepont thought not, directly.

The COURT. The record taken by the stenographers will show that the witness was asked this question, and he answered that his judgment was better now than then, because for the last year or more he had been engaged in enlisting men; that it was his business to take the height of every man he enlisted, and that in that way he had become an expert or judge of the height of different persons.

Mr. PIERREPONT. I am quite content with that statement. I will ask the witness but one other question.

Q. State whether you have ever had a habit of considering or speaking of men 5 feet 6 inches high—men weighing 130—as large men or small men.

Mr. BRADLEY. We object to that question.

Mr. PIERREPONT. The question is in response to questions they have asked the witness in relation to large men and small men.

The COURT. And he has answered that he estimated the size of men by their heft rather than by their height.

Mr. PIERREPONT. That is all I desire to have understood.

By a JUROR:

Q. I wish to ask the witness whether he saw the entire full face of the prisoner from the position he occupied on the carriage step on the night in question?

A. I saw all the time three-quarters of it, and a part of the time the whole it.

By another JUROR:

Q. How was the prisoner dressed on the night of the assassination?

A. His coat was drab, his hat was something like this hat I have here, but no

exactly; one of these fashionable round-top, stiff-brimmed. It appeared, to my recollection, to have been black.

Q. How as to the pants?

A. I do not recollect.

Q. Had he on a watch chain or guard that night?

A. I did not observe any.

PETER TALTAVUL sworn and examined.

By Mr. PIERREPONT:

Q. Where did you live on the 14th of April, 1865, on the day the President was murdered?

A. I lived on Eighth street east, at the Navy Yard, between G and I, south.

Q. Where was your place of business?

A. On Tenth street.

Q. What was your business?

A. I kept a restaurant.

Q. Where was that?

A. Right next to Ford's theatre.

Q. Were you in the restaurant at the time the murder was committed?

A. I was.

Q. Did you know John Wilkes Booth?

A. Yes, sir.

Q. Had you frequently seen him there, or otherwise?

A. He used to come in there very often.

Q. You knew him well by sight?

A. Yes, sir.

Q. Did he come in that evening?

A. He came in that night.

Q. What did he do?

A. He walked up to the bar and called for some whiskey.

Q. What did you do?

A. I gave it to him.

Q. State whether he was alone.

A. He was.

Q. Did he drink it?

A. Yes, sir.

Q. Then what did he do.

A. He called for some water. I did not give him any water when he called for the whiskey. It is usual to give water, but I did not give it to him. He called for water, and I gave it to him. He laid the money on the counter and went right out.

Q. State how he appeared as to coolness or nervousness.

A. I did not see anything unusual in him at all.

Q. Nothing unusual in his dress?

A. No, sir.

Q. He was dressed in his usual way—no disguise?

A. No, sir; no disguise.

Q. How many minutes after he took that drink was it before you heard the President was assassinated?

A. As near as I can come at it, it must have been from eight to ten minutes.

Q. Had you seen Booth often before?

A. I used to see him almost every day.

Q. Who had you seen him with near the time of this occurrence?

A. I could not exactly recollect. He used to come in with several gentlemen; sometimes with one, and sometimes with another.

Q. I will call your attention to a particular time. Did you see him with any person charged as one of the conspirators?

A. I saw him two or three days before with Herold.

Q. Where was that?

A. In the same place; he came in there.

Q. State what occurred.

A. I could not exactly say. I think they just came in—came to the bar and got a drink; probably had a little conversation together, and went out again. I could not particularly describe what passed there at all, not taking any particular notice.

Q. On the night of the murder did you see this same Herold come in?

A. No, sir; I did not.

Q. On that night or the night previous did any one come in and inquire for Booth?

A. No, sir; that was in the afternoon. In the afternoon of the same day Herold came in there and asked if I had seen John. I asked him what John. He said John Wilkes Booth. I told him I had not seen him.

Q. What, then, did he say; did he ask you anything; and if so, what?

A. No, he simply came to the bar and inquired if John had been there. I asked him what John, and he said John Wilkes Booth.

Q. Did he ask you whether he had been there that day or evening?

A. No, sir; he just shut the door and went right out.

Q. And between the time Herold came in and the time Booth came in, jus before the assassination, you had not seen either?

A. No, sir.

Q. At what time in the afternoon of the 14th was it that Herold came in?

A. I judge it must have been about 4 o'clock, as near as I can possibly think of it.

Q. At the time Booth came in and took a drink, just before the assassination, was there anything in his dress or appearance to awaken suspicion in your mind?

A. No, sir; I did not take notice of anything unusual at all. He just came in there and asked for a drink.

DAVID C. REED sworn and examined.

By Mr. PIERREPONT:

Q. In what city do you live?

A. In Washington city.

Q. How many years have you lived here?

A. About thirty years.

Q. Do you know the prisoner at the bar by sight? (prisoner made to stand up.)

A. I do.

Q. How long have you known him by sight?

A. Since quite a boy.

Q. Since you or he was quite a boy?

A. Since he was quite a boy.

Q. Were you in the city of Washington on the day of the murder of the President?

A. I was.

Q. Did you see the prisoner at the bar on that day in Washington?

A. I think I did.

Q. Where did you see him?

A. I saw him on Pennsylvania avenue just below the National Hotel. I was standing as he passed just in front of where Mr. Steer keeps the sewing-machine store.

Q. Which way was he going?

A. From towards the Capitol.

Q. About what time of the day of the 14th was it?

A. It was about half past two, as near as I can recollect—between two and half past two.

Q. Had you had a nodding acquaintance with him at all?

A. I had; I knew him, and I suppose he knew me. There was no intimate acquaintance at all. I recognized him when I met him.

Q. As he passed did you recognize him, or he you?

(Question objected to by Mr. Bradley as leading.)

Q. As he passed, state what occurred.

A. There was a recognition; whether it was by him or me first, I am unable to say.

Q. State whether it was by both.

A. I could not state positively whether I nodded first or he did; we both nodded.

Q. Will you state whether there was anything about his dress or equipments on that occasion which attracted your attention?

A. There was.

Q. Will you tell the jury what it was?

A. What attracted me more particularly was his dress rather than his face. I remarked his clothing very particularly.

Q. What was there about him that attracted your attention?

A. The appearance of the suit he wore—very genteel; something like country manufactured goods, but got up in a very elegant style, the coat, vest and pantaloons.

Q. Was there any reason why you noticed his clothes? If so, state it to the jury.

A. I cannot say there was anything particular, except his appearance so remarkably genteel. I was rather struck with his appearance.

Q. State whether he was on foot or on horseback.

A. He was on foot.

Q. What was there on his feet?

(Question objected to by Mr. Bradley as leading.

Objection overruled.)

A. I suppose he had boots or shoes. As he passed from me I turned and looked at his feet. He had on a new pair of brass spurs.

Q. Now describe these spurs.

A. They were plain common brass spurs; nothing very particular about them except the rowel.

Q. What was there about the rowel?

A. The rowel was very large and very blue; they evidently were bran new.

Q. What was upon his head?

A. He had on a felt hat. It was not one of these very low-crowned hats; it had a rather wide brim, a sort of drab-color felt hat.

Q. State whether the brim was a stiff or a limber one.

A. It was a stiff-brimmed hat.

Q. Which way did he go after passing you?

A. He was passing up the avenue towards the Metropolitan Hotel from where I was standing.

Q. State whether his gait was rapid or slow?

A. It was not very rapid; an ordinary pace in walking; nothing very hasty.

Cross-examined:

By Mr. BRADLEY:

Q. What was it that attracted your attention about his dress; was it a particularly fine dress?

A. It was a singular dress—one that I had never seen him wear before. It

was very genteel and very pretty. I noticed him coming up; I stood facing him as he passed; I was standing on an elevated position, probably eight inches above the pavement.

Q. Was he in the habit of dressing genteelly or not?

A. I had never seen him dressed in a suit of clothes anything like that before; I cannot say but what he was in the habit of dressing genteelly.

Q. How did he usually dress when you saw him?

A. I cannot say that I could describe any particular dress. Sometimes I have seen him in rather rough costume as he would come in from the country; at other times I have seen him dressed as genteely as anybody that walks the street.

Q. How long had you been in the habit of seeing him come in from the country?

A. Fifteen years, as nearly as I can recollect.

Q. What was he doing; what was he engaged in?

A. I have seen him here market days, I suppose, passing and repassing.

Q. Did he stand in market?

A. I cannot say; I never saw him standing in market.

Q. At what intervals of time were you in the habit of seeing him during that fifteen years?

A. I could not come at how often I had seen him in that fifteen years; it would be very hard for me to say.

Q. When did you see him last before you saw him on the 14th of April?

A. I cannot exactly name the time—that is, give the date. It was about the time of the opening of the race-course across the river beyond the Eastern branch.

Q. You saw him then and there?

A. I saw him then and there.

Q. You mean the first opening?

A. Yes, sir.

Q. For how long a time had you been accustomed to see him coming in from the country?

A. I could not give exact dates; I have seen him since he was quite a boy; I have seen him here with his father.

Q. How often since he was grown?

A. That I could not say positively, as to the number of times; there was nothing remarkable about it by which I could fix any particular number—ten, twenty, fifty, or any other number.

Q. Did you ever meet with him anywhere except passing?

A. I have met him at the livery stable, where he stood talking.

Q. What livery stable?

A. Pumphrey's; they used to put up there, but subsequently changed to the brick stable across the way.

Q. When was that; how long before this event?

A. It was a considerable time before the death of his father.

Q. Do you remember when his father died?

A. I think his father died some time in 1863—somewhere about that neighborhood.

Q. Four years ago?

A. I think he has been dead near about that time.

Q. Were you ever at his father's house?

A. Yes, sir.

Q. How long ago was that?

A. In 1851.

Q. Sixteen years ago; how large was John Surratt at that time.

A. He was a little chunk of a boy, probably so high. (Three feet.)

Q. How often were you at their house?
A. I was there on three occasions.
Q. In what year?
A. During the fall of 1851.
Q. How often since then?
A. I have not been there since.
Q. Where did you meet him at any time between then and the fall before the death of Mr. Lincoln?
A. I have seen him in the city.
Q. Where?
A. As I have said, at the livery stable, and I have seen him on the street.
Q. Did you ever talk with him at the livery stable?
A. That I cannot say positively; whether I ever entered into conversation with him more than merely speaking.
Q. Do you recollect ever to have said that he had been in your room since you knew him?
A. I said I thought he had, but I was mistaken.
Q. Have you not said you have seen him in your room frequently?
A. No, sir.
Q. Do you recollect telling any citizen of your acquaintance that the place where you met him at the time you have mentioned on the 14th of April was further up the avenue, above 6th street?
A. No, sir; I never said so.
Q. Do you recollect having said to any acquaintance of yours what his age was or his personal appearance?
A. I described his personal appearance.
Q. With any citizen, in conversation, do you recollect saying that he was a man about 35 years old?
A. From 30 to 35 years old I supposed he might be.
Q. You say your attention was not particularly drawn to Surratt's face at that time; can you state whether he had any beard or not?
A. I cannot say positively whether he had, or not; if he had, it was so slight as to be scarcely perceivable.
Q. Do you mean so light in color or in growth?
A. So light in color and in growth.
Q. So that if he had a beard you do not recollect it?
A. I do not recollect any at all.
Q. What livery stable did you go to after his father's death?
A. To the brick stable belonging to Marshall Brown. His father changed from Pumphrey's to that before his death.
Q. Who kept that stable then?
A. Levi Pumphrey.
Q. Do you mean the stable at the corner of 6th and C streets?
A. Yes, sir; at the corner of 6th and C streets.
Q. Where did young Surratt put up his horse after his father's death?
A. Whether he put his horse there or not I am not sure. I have seen him at the stable, but I have no recollection of seeing him stop there on horseback since the death of his father.
Q. Do you recollect where Surratt the elder lived when you visited him?
A. Away down here in Maryland.
Q. In what is called Surrattsville?
A. It was not called Surrattsville then; it was called John Surratt's.
Q. What was there at the place called John Surratt's?
A. He kept a hotel and a post office.
Mr. Bradley desired to have the privilege of recalling Mr. Reed for cross-

examination at some future time, after the defence should have consulted with a witness now out of the city.

Mr. Carrington objected to this course, as being without precedent, and held that there was no rule of court that justified such a course.

Mr. Bradley argued that it was a matter within the sound discretion of the court. The defence expected to prove that Mr. Reed had made statements out of court contradictory to what had been testified to in court. The defence, however, did not know that Mr. Reed was to be called, and they could not put the question in form until the absent witness referred to was here.

The decision of the question was reserved until to-morrow morning.

SUSAN ANN JACKSON (colored) sworn and examined.

By Mr. PIERREPONT:

Q. How long ago were you married?

A. I have been married two years this May.

Q. What was your name before marriage?

A. Susan Ann Mahoney.

Q. Were you married before or after the assassination of the President?

A. I was married two weeks after it.

Q. You remember that event do you?

A. Yes, sir.

Q. Do you remember where you were living in the month of March, or the latter part of March, of the year in which the President was assassinated, before you were married?

A. I was living at Mrs. Surratt's.

Q. On what street was Mrs. Surratt's?

A. On H street, between 6th and 7th.

Q. And as you go up that way east, on which side of the street is it?

A. On the right-hand side.

Q. Do you remember the number?

A. No, sir, I do not.

Q. Do you remember about the entrance or stoop of the house, how that was?

A. There were high steps run up in front.

Q. State to the jury about how high, whether they went up to the story or not.

A. It was up to the second story, pretty near the windows.

Q. Then it was very high, was it?

A. Yes, sir.

Q. Where did you go from when you went to Mrs. Surratt's in March—from whose service did you go?

A. Mrs. Brown's.

Q. Where did Mrs. Brown live?

A. She lived on the island.

Q. Do you know Mrs. Brown's first name, or her husband's name?

A. No, sir, I do not. I did not stay there very long.

Q. Do you remember the Good Friday in the April following the March when you went to Mrs. Surratt's.

A. No, sir; I don't remember the very day I went there.

Q. Do you remember the Good Friday following that day, or any circumstances about that Good Friday in April?

A. Yes, sir.

Q. Do you know whether Mrs. Surratt went away that day?

A. Yes. She went down in the country on Good Friday, between 11 and 12 o'clock.

Q. In what did she go?

A. She went in a buggy.
Q. Did you see the man who went with her?
A. Mr. Weichman.
Q. Did you see him?
A. Yes, sir. He boarded there at the same time.
Q. You would know him now, if you were to see him?
A. Yes, sir.
Q. Did you see Mr. Weichman when he came back with Mrs. Surratt
A. Yes, sir; I saw him when he came back with Mrs. Surratt.
Q. About what time in the evening did Mrs. Surratt return?
A. As near as I can recollect, it was between 8 and 9 o'clock.
Q. After that, on that evening, will you tell us whether you saw the prisoner here?
WITNESS. That one sitting over there? (pointing to the prisoner.)
Mr. PIERREPONT. Yes.
A. Yes, sir; I have seen him in the dining-room.
Q. Who was with him?
A. His mother was with him.
Q. What did his mother say to you?
A. I do not know.
Q. Had you ever seen him before?
A. No, sir; I had never seen him before.
Q. How long had you lived in the house?
A. I had been there three weeks.
Q. What did his mother say?
A. She told me that was her son.
Q. What else did she say to him, or about him?
A. She did not say anything else. When I was gathering up some clothes to put in the wash, I asked if they were for Mr. Weichman, and she said no, they were for her son.
Q. Did she say anything about who he looked like?
A. She asked me did he not look like his sister Annie.
Q. What did you say to that?
A. I said I did not know; I did not take good notice of him to see who he favored.
Q. Who was it that asked you if he did not look like his sister Annie?
A. Mrs. Surratt.
Q. Did you bring anything into the room you have spoken of where she was sitting with her son?
A. I had just brought a pot of tea into the room.
Q. Who was in the room when you brought in the pot of tea?
A. Not any one, except her son.
Q. Do you see any one now who she told you then was her son?
A. Yes, sir; I am looking at him now.
Q. State whether that is the one.
(The prisoner made to stand up.)
A. That is the man, sir.
Q. After you took in the pot of tea, what did you do?
A. Just went out again.
Q. Did you return again?
A. No, sir; I did not return in the room any more.
Q. Will you tell us, as near as you can, about what time in the evening you took in the pot of tea?
A. As near as I can come at it, she came home between 8 and 9 o'clock. Well, when she came home and came to the dining-room, I carried in supper for

Mr. Weichman, the man who boarded there. After he went out she called me and asked me for a second plate, cup, and saucer. I carried them to her.

Q. And then you found this man there?

A. Yes, sir.

Q. Did you know his sister Annie?

A. Yes, sir; she lived there.

Q. She was in the house?

A. Yes, sir.

Cross-examined:

By Mr. BRADLEY:

Q. Were you ever examined as a witness about this matter before?

A. Yes, sir; Mr. Orrut examined me—or Captain Orfutt. I am not sure about the name.

Q. Where were you examined?

A. He carried me down to his office—I forget where it was—in the night.

Q. When was that?

A. Monday night after the assassination happened.

Q. They took you down to a guard-house, or some place?

A. They took me to the office.

Q. Do you recollect where it was?

A. No, sir; I had never been there before. I do not recollect where it was. I think it was somewhere near the Treasury.

Q. Who took you there—do you remember?

A. No, sir; I went in a hack.

Q. You were examined there?

A. Yes, sir.

Q. Did they write down your examination?

A. Yes, sir.

Q. You were not examined afterwards?

A. No, sir; not then. I was not.

Q. Were you at any time after this?

A. Yes, sir; since then I have been down to what they call the War Department; in the course of last week, I think it was.

Q. How long after the assassination?

A. It was just last week I was carried down to the War Department. Mr. Kelly carried me.

Q. And you were examined there?

A. Yes, sir.

Q. Do you remember who examined you there?

A. No, sir; I do not know the gentleman's name.

Q. Was what you stated then written down?

A. Yes, sir; it was written down.

Q. When you were examined before General Augur, if that was the place, did you then make the same statement you do now?

A. Yes, sir.

Q. You stated that Mrs. Surratt's son was there that night?

A. Yes, sir.

Q. What became of him?

A. I do not know, indeed; I did not see any more of him.

Q. You saw him about 9, or half past 9?

A. It was between 8 and 9 when she came—after Mr. Weichman and she took tea, she called me to bring a pot of tea to this gentleman.

Q. Was Mr. Weichman in there also?

A. No, sir; there was not any one there at all; he was gone out.

Q. Did he come into the same room?

A. No, sir; he was not in there with Mr. Weichman.
Q. Who came in from the country with Mrs. Surratt?
A. Mr. Weichman.
Q. Where did he go then?
A. I suppose he went up stairs to bed, or somewhere.
Q. Where was this gentleman then?
A. I do not know.
Q. You had seen him before that?
A. No, sir; I had never seen him until that night.
Q. And when you went into the parlor you found him sitting in the dining-room, and Mrs. Surratt told you it was her son?
A. Yes, sir.
Q. And this is the very same gentleman?
A. Yes, sir; this is the very same gentleman who was in there with Mrs. Surratt.
Q. And that you told to these gentlemen and they wrote it down the Monday afterwards?
A. Yes, sir.
Q. And you never saw him before then, or since?
A. No, sir; never before nor since, until one day last week when he was brought up here.
Q. And you are sure he is the very same man?
A. He is the very same man she told me was her son.
Q. And the very same man you saw at her house?
A. The very same man I saw the night after she came in from the country.
Q. The night of the assassination?
A. Yes, sir; the same night.
Q. You say you had been living there three weeks; was it just three weeks?
A. Yes, sir; three weeks on Monday.
Q. Now if you can go back a little, are you quite sure the gentleman you saw there, who she told you was her son, was not there on Monday, ten days before the assassination of the President?
A. I never saw that gentleman she called her son until Friday night.
Q. You are sure it was Friday night?
A. Yes, sir; it was the Friday night she came from the country.
Q. And that was the night the President was assassinated?
A. Yes, sir; it was the very night she came from the country; it was the Friday night before Easter Saturday.
Q. Do you not recollect the night the President was assassinated?
A. It was Friday night.
Q. Was that the same night you saw this gentleman there?
A. It was the very night I saw this gentleman there.
Q. You must have been there the night of the 3d April, the Monday night of the week before the President was assassinated?
A. I was there a week in March.
Q. Did you not see him there on that Monday night the week before the President was asassinated?
A. No, sir; not as I know of, I did not see him there the week before; I saw him on Friday night.

By Mr. PIERREPONT:

Q. You stated that you went into the dining-room, and that when you were in there Mrs. Surratt told you the person there was her son; did you go there of your own accord, or did she call you in?
A. She called me in to bring a clean plate and cup; yes, sir.

JAMES SANGSTER sworn and examined.

By Mr. PIERREPONT:

If your honor please, in consequence of this witness being out of the jurisdiction of the United States, we are obliged to go a little out of our order so that he may return; I will therefore examine him now.

Q. Where do you reside?

A. Montreal, Canada.

Q. Where did you reside in April, 1865?

A. Montreal.

Q. What was then and now your position?

A. Book-keeper at St. Lawrence Hall.

Q. Will you take this book and state to the court and jury what it is?

A. That is an arrival book.

Q. Take these and state what they are.

A. One contains a copy of the bills rendered, and the other is a leaf from our departure book, in which is written the number of the room the parties occupied, when they go away, or by what train or boat.

Q. Explain what you mean by arrival book.

A. Parties come there and register their names before procuring rooms.

Q. Will you state how you know when a party leaves your house, what train he will take, and in what direction?

A. The entry is made in this departure book of the train or boat of the party going away.

Q. Now turn to this arrival book, or register, as we are accustomed to call it, and will call it, to April 6, 1865, and state whether you see there the name of John Harrison?

A. Yes, sir.

Q. Please now show the book to the court and then the jury, (entry pointed out by witness to court and jury.) Now turn to the next arrival with the same name and tell us what day of April it is under?

A. The 18th.

Q. Now can you tell us whether the last is the same handwriting as the first?

A. Yes, sir.

Q. Will you tell us from that register at what time in the day that arrival was?

A. 12.30 noon.

Q. What was the time of the first arrival?

A. 10.30 a. m.

Q. Will you now show these names to the jury? (Register exhibited to jury and entries pointed out.) Now will you tell the court and jury, after the arrival on the 6th, when was the departure of the man who entered his name as John Harrison; tell us when he paid his bill, when he departed, and by what train?

A. He paid his bill on the 10th, but did not go away.

Q. When did he go away?

A. He went away on the 12th.

Q. How do you know he did not go away on the 10th?

A. It is written opposite the number of the room, "Not gone."

Q. How do you know he went away on the 12th?

A. His bill was paid on the 12th for two days.

Q. Turn and see if there is anything there that proves that.

A. The name is entered in this bill book, with the amount paid on the 10th, four days; then it is on this departure book that he staid two days, and went away on the 12th.

Q. Which way did he go?

A. On the New York train.

Q. At what time did the train leave?
A. The train left at 3 o'clock; leaving the house at 2.45.
Q. That was what day?
A. The 12th; he left the house at 2.45.
Q. Now turn to the 18th, when he arrived again, and tell us how many hours or minutes he staid on the 18th.
A. He did not stay any time in the hotel; I do not know how long; he just came into the house.
Q. Do you know where he went?
A. I do not know the exact place; he went somewhere and was secreted in the city, I believe.
Q. He left the hotel instantly, did he?
A. He left it instantly.

Cross-examined:

By Mr. BRADLEY, jr.:

Q. You say he left the hotel instantly on the 18th. What is the entry on the 18th?
A. There is no entry excepting the name on the register.
Q. He may have been there or somewhere else?
A. He may have been; he paid no bill.
Q. And had no room assigned him?
A. Yes; he had a room assigned to him.
Q. And he may have been there without your knowing it?
A. He may possibly have been there.
Q. Do you identify this gentleman at the hotel as the prisoner at the bar?
A. No, sir; I cannot say that I identify him.
Q. Have you ever seen the prisoner at the bar before you came here?
A. I cannot say that.
Q. Are there any circumstances that would recall this man to you?
A. The circumstances were, that after the death of Lincoln parties came there inquiring for him, and from the description they gave of his dress I remembered such a party there answering to that description.
Q. What was this dress?
A. He wore what is called a Garibaldi jacket.

By the COURT:

Q. What is a Garibaldi jacket?
A. It is a kind of straight coat, or jacket, with a belt of the same material.

By Mr. BRADLEY, jr.:

Q. Do you recollect anything else peculiar about his dress?
A. I remember that he was tall—nothing more than that. At the time of these inquiries I remembered that such a party had been in the house. I do not remember now his appearance except that he wore a Garibaldi jacket.
Q. Do you remember whether he carried a cane or not?
A. I do not remember that.
Q. Or the style of his hat?
A. My impression is that it was a slouch hat—a kind of soft hat.
Q. Do you remember the pants he wore?
A. No. I cannot describe them. The coat was close-fitting, buttoning up in front, with pockets in the sides.

By a JUROR:

Q. Do you remember the color?
A. I do not remember the color. It was a style of coat not much worn there at the time, and attracted my attention.

Q. Was the hat hard or soft?

A. My impression is, it was a soft hat.

By Mr. PIERREPONT:

Q. You saw the prisoner standing up just now. What do you say as to height compared with this man?

A. I do not remember much about it.

Q. Do you remember what description was given of this John Harrison by the parties who came to inquire?

A. I do not remember exactly what the description was. I remember they gave such a description that I knew the party had been in the house; what it was I do not recollect.

Mr. PIERREPONT. I am informed by counsel upon the other side that they are going to bring in a dress they claim to correspond to that of this John Harrison; I will not, therefore, ask any further question at present.

Mr. BRADLEY. I will say that we had sent a subpœna for Mr. Sangster for the purpose of proving these facts. I state it in order to ascertain how far it may be taken as a stipulation that the prisoner, John H. Surratt, on the 6th of April, 1865, arrived at that hotel, and entered his name on the register as John Harrison; that he left there on the 12th of April, returned on the 18th, and again registered his name as John Harrison.

Mr. PIERREPONT. And that these two entries are in his handwriting.

Mr. BRADLEY. That he registered that identical name. We wish to exhibit to Mr. Sangster not the dress worn by the prisoner, but a dress of the same kind.

Mr. PIERREPONT. That will certainly save us the necessity of taking a very considerable amount of evidence.

The dress referred to was here brought into court, and the question asked by Mr. Bradley, jr., "Is that the style of garment worn by the person entering his name as John Harrison on the occasion referred to?" Ans. "That is the style of garment."

The court took a recess until to-morrow at 10 a. m.

WEDNESDAY, *June* 19, 1867.

The Court met at 10 a. m.

The court said that on Monday a request had been made by the counsel for the defence to have the court direct the prosecuting attorneys to furnish them with a list of the witnesses who were to be examined on the part of the government. He had carefully considered the subject, and had come to the conclusion that he had no power to make such an order, and that such an order would look like an infringement on the rights of the prosecution in thus compelling them to make known and lay open their case. There were various reasons why the order should not be made. It would gratify him to accommodate the counsel in this respect, if he could do so consistently with his view of the law.

In regard to the subject proposed yesterday, relative to the defence being allowed the privilege of retaining witnesses and cross-examining them at any time during the trial, he would say that he had never known that course of practice to be allowed, and could not see any good ground for permitting it in this case. The same principle should apply in this case as in all others, which was that the cross-examination be restricted to the subject-matter brought out on the examination in chief. He then read the rule as set forth by the Supreme Court, to the effect that the defence had no right to cross-examine except as to matters brought out on the examination in chief.

Mr. Bradley said they were advertised of a list of seventy witnesses which the prosecution had, but they knew nothing as to what these witnesses would testify to, and could not therefore contradict them, and they had accordingly asked that the cross-examination of each witness be postponed.

CARROL HOBART, conductor, sworn and examined.

By Mr. PIERREPONT:

Q. What is your present occupation?

A. I am running the train on the line of the Vermont Central railroad.

Q. Will you tell the jury from what point to what point that train runs?

A. I run it from White River Junction to St. Albans. The train runs to Montreal.

Q. Where is this White River Junction?

A. It is on the line of the Vermont Central railroad, at the terminus of the Northern New Hampshire railroad. It is on a direct route from Boston to Montreal.

Q. State how far this is from Burlington.

A. One hundred and three miles.

Q. Does the road from Burlington unite with this road of yours?

A. Yes, sir. It is the Vermont Central and the Vermont and Canada properly. We run out of the Vermont and Canada road at Essex Junction. The Vermont and Canada starts from Essex Junction, and runs to Rouse's Point. The Vermont Central and the Vermont and Canada is a consolidated concern.

Q. In starting from Burlington, Vermont, the road goes to Rouse's Point?

A. Yes, sir. I go twenty-four miles over the Vermont and Canada road to go to St. Albans. I remain there one day, and the next morning I start and go twenty-four miles to Rouse's Point. That night I return and go back to White River Junction, the whole length of the route.

Q. So that, then, the Burlington train comes up and meets your train?

A. Yes, sir; that comes up to Essex Junction, and the passengers from that train get on to mine. I stay that day and that night at St. Albans.

Q. Do you take the Burlington passengers at Essex Junction?

A. I do.

Q. From there you take them to St. Albans?

A. Yes, sir.

Q. At what time do you get to St. Albans, if you run regularly?

A. I was due there at 6 o'clock in the morning.

Q. Between the 10th day of April, 1865, and the 20th day of April, 1865, state whether you were the conductor on this same road?

A. I was, and have continued to be ever since.

Q. Do you remember about what time in April, 1865, the first boat came up the lake, that left passengers at Burlington?

A. I got the passengers from the first trip up the lake by the boat on Tuesday morning, in April.

Q. Have you any memorandum of what kind of a night it was prior to this morning that you took these passengers; I mean as to whether it was stormy or otherwise?

A. I think it was a clear night, but I am not sure.

Q. At what time in the morning or night was it that your train started?

A. I started from White River Junction at 11.55 at night; I cannot say whether we were then on time or not, but that was the time of starting.

Q. Where did you go?

A. Directly to St. Albans.

(The prisoner was here requested to stand up, that the witness might see him. He did so.)

Q. Will you tell the jury what occurred on the train that night that was peculiar?

A. I arrived at Essex Junction at 5 o'clock in the morning—Tuesday morning. I left Essex Junction with the passengers from Burlington and the boat

on Lake Champlain. As I went through the train, I found between the passenger car and the sleeping car two men standing on the platform; they were on the platform of the passenger car, one on each side of the door. I spoke to these men, and asked them for their tickets. They said they had none, and that they had no money; that they had been unfortunate.

Q. Please describe these men?

A. One of them was tall; he was about my height as he stood up in the car; he was rather slim; had on a scull cap—one of these close-fitting caps—and short coat. His vest was opened down low, and his scarf came over under his collar and stuck in his vest. The other man was a short, thick-set man, of sandy complexion, with whiskers around his face, and had a slouched hat on.

Q. Of what color were his whiskers?

A. Sandy, I think.

Q. Was he a rough or genteel looking man?

A. He was a rough-looking man.

Q. How was he dressed?

A. I cannot state about his dress.

Q. With whom was the conversation?

A. With the tall man.

Q. State what the conversation was?

A. I told him to come into the car, and put my hand on his shoulder. He came in. He said that three of them had been to New York; they were Canadians, but had been at work in New York; that they had received some money two nights before—I won't be positive about the time—and that a third party who had been with them got up in the night, took all the money they had, and left; that he had left them without anything—in a destitute condition.

Q. What were they trying to do, did he say?

A. He said they must go to Canada; that they wanted to get home; that their friends lived in Canada, and that when they got home they would get plenty of money, and would remit the amount of fare to me.

Q. What further?

A. I told them that I could not carry them. I spoke to them of the necessity of having money if they were going to travel, and that I could not carry them through free. They expressed themselves as very anxious to get through. I told them that I should leave them at the next station—Milton—between Essex Junction and St. Albans. I was busy when I got there with the train, and so forgot them. I went through the train again after leaving Milton, and found them in the rear end of the car. I tried them again to see if they had not some money. They said they had none, but that they must go to St. Albans; that when they got there they could foot it. They inquired of me how far it was to Franklin; that they were going through the country. I asked them how they were going to get there? They said they were going afoot.

Q. State where Franklin is?

A. Franklin lies northwest of St. Albans fourteen miles; I think the distance is about four miles from the line—the Canada line.

Q. When you asked them how they were going to get to Franklin, what did they say?

A. They said that they would have to go afoot; that they had no money to pay their fare on the stage; that if I would carry them to St. Albans they would try and get home, or where their friends were.

Q. Who did this talking?

A. The tall man.

Q. In the progress of this talk, or in the beginning of it, state what there was, if anything, peculiar about their dialect.

A. This tall man tried to use broken English, as if he were a Canuck, but

occasionally he would get a little in earnest for fear he was to be put off, and then he would drop the Canuck and speak good square English.

Q. What did you discover as to his square English finally?

A. That was what aroused my suspicions that things were not all right; that they were travelling *incog.*, and I urged the matter more than I would if they had been really poor people and I had had strong proof of that fact.

Q. Did anything happen in relation to the position of the tall man's hands at all? If so, what?

A. His hands were not like those of a laboring man; were not like those of a Canadian who had been used to hard labor. They were white and delicate.

Q. You took them to St. Albans?

A. I did.

Q. When they got to St. Albans what did they do?

A. They went out into the yard, on to Lake street. I went into the general ticket office to attend to my business.

Q. Did you see them any more that day?

A. I will not be positive. I cannot say whether I did or not.

Q. If you did, it was soon after, I suppose?

A. Yes, sir; after I had done my work—about ten minutes, perhaps.

Q. Can you tell us the time the train went on from St. Albans to Montreal after you got there? or what time it would be due in Montreal?

A. Due there at 9.45 a. m.

Q. That same morning?

A. Yes, sir.

Q. At Montreal?

A. Yes, sir.

Q. Have you seen anybody in court to-day that looks like the tall man that you saw?

A. The man that stood up before me resembles the man that I saw very much. I should not recognize his face. He had at that time a moustache, with no whiskers on his chin. He had a cap on.

Q. How did he wear his skull cap?

A. It was drawn down over his forehead, in the usual way.

Q. Anything on one side at all?

A. Not that I noticed.

Q. Did you hear anything soon after that about a handkerchief at St. Albans?

Mr. MERRICK. That is hardly admissible.

Mr. PIERREPONT. I mean a handkerchief with Surratt's mark on it—the name of "J. H. Surratt."

Mr. BRADLEY. That doesn't make any difference.

The COURT. Not anything that he heard. If he saw anything of the handkerchief it would be proper for him to state it, but not what he heard.

Mr. PIERREPONT. I do not believe that he did see it. That's all we wish with the witness.

Before the cross-examination was proceeded with the following agreement was entered into by counsel on either side:

"We agree that the time-tables of any railroad in the United States, duly certified from the office of the company, for the month of April, 1865, and connected with the routes from the city of Washington to Canada, and from Detroit to Quebec, may be put in evidence, and shall be received without objection; and, further, that these time-tables shall be produced on either side before the close of the case, in the regular process of the examination."

Cross-examination:

By Mr. BRADLEY:

Q. Have you any time-tables showing when the first steamboat went up the lake to Burlington from White Hall?

A. I have no means of knowing the time that it arrived at Burlington—that is, the day of the month. I know it was on a Tuesday morning that I took the passengers from the first trip of the boat, because her trips are only Tuesdays and Fridays.

Q. Can you ascertain the day of the month, when you return home?

A. I cannot. There is no way that I can get the date, sure. The accounts go in regularly every trip. There is no difference in them; they are all alike. I could send you the account for the month; that is all.

Q. You do not know, as I understand from your testimony, whether these parties came by the steamboat to Burlington, or not?

A. They told me that they lay in the depot at Burlington all night.

Q. You started the next morning at 5.55?

A. No, sir.

Q. What train brought them to you?

A. It is a short train. There is a branch road from Burlington to Essex Junction. I think there are seven miles of road there.

Q. They arrived, then, at Essex Junction before 5 55 in the morning?

A. I think, at that season, 5 o'clock in the morning was the time for leaving Essex. I left White Hall Junction at 11 55; arrived at Essex Junction at 5, and left there immediately, as soon as I could get the passengers removed and take on baggage, &c.; and then reached St. Albans, twenty-five miles further north, at 6 o'clock.

Q. How far beyond St. Albans did you run?

A. I go twenty-four miles to Rouse's Point the next morning.

Q. From where?

A. From St. Albans.

Q. What train took up your passengers at St. Albans, and went on immediately?

A. It was the morning mail train out of St. Albans, going west.

Q. To Ogdensburg and Montreal?

A. Yes, sir. The passengers for Ogdensburg and Montreal went to Rouse's Point on the train, and then they separated.

Q. What interval was there between your arrival at St. Albans and the departure of the train for Rouse's Point?

A. I think the time allowed for breakfast at that season was twenty or thirty minutes. At Rouse's Point there are two trains running northwest—one to Ogdensburg and the other to Montreal.

Q. What time does that train to Montreal arrive in Montreal?

A. At 9.45, I think.

Q. I understand you ran up to Rouse's Point in the morning after your arrival at St. Albans, and made a long stay there?

A. Yes, sir; I think from 7.15 a. m. to 5.45 in the evening. I took my departure for White River Junction at 5.45 in the evening.

Q. At what time does the afternoon train which you took at Rouse's Point leave Montreal?

A. I think, at that season, it left at 3 o'clock in the afternoon.

Q. Did the passengers, by the Montreal train reach St. Albans in time to connect with you at 5.45?

A. They came back to Rouse's Point at 5.30, I think—giving me fifteen minutes in which to change passengers, baggage, &c.

Q. That is the connecting train?

A. Yes, sir.

Q. What time do you reach White River Junction?

A. I reached White River Junction, at that season, at 1 o'clock a. m.—in the night.

Q. What train, coming south, takes up your passengers at White River Junction?

A. At that time it was a train going directly through Springfield. We have two roads to New York—one by way of Springfield, and the other by way of Albany.

Q. Taking the New York road first, what time did the train leave which takes your passengers? What time does that train leave for Albany?

A. It leaves for Essex Junction at 8.40, I think, in the evening, going to Burlington and Albany. Left White River Junction at that time at 1.10, I think, for Springfield.

Q. The train from New York, then, leaves at Essex Junction?

A. Yes, sir; for New York by way of Troy and Albany.

Q. Is there any other route except the Springfield route?

A. No, sir; except by way of the boats from Rouse's Point. The boats run from Lake Champlain to White Hall, leaving Rouse's Point at 5.45.

Q. Do you recollect whether the tall one of the two persons who went on that trip with you had any "goatee," as it is called?

A. I think not, though I would not be sure.

Q. Was not his face quite clean?

A. Otherwise than a slight moustache.

Q. Do you recollect his eyes at all?

A. I could not state positively anything about them.

Q. Did not his skin strike you as being quite fair?

A. No, sir; I should not think he looked very fair. He was poorly clad and looked as if he had been without his sleep for some time.

Q. The taller one of the two?

A. Yes, sir; he did all the talking that was done. He looked rather rusty—not particularly fair.

Q. Do you recollect whether or not, in the month of April, especially the April of 1865, the route from Albany to Burlington was very irregular?

A. The boats were irregular in their arrivals at White Hall. They were not so irregular out of Burlington.

Q. Did they fail to make their connection with you?

A. Yes, sir; they did on the beginning of navigation.

Q. That is a daily route, is it?

A. Yes, sir.

Q. Did you make more than a trip a day?

A. No, sir. It takes the boats some twelve or fourteen hours to make the passage over the lake. They go up one day and come down the next.

Q. Do you know whether that same route goes to Rutland or not?

A. O, yes, sir; we connect with a train through to Rutland, at Saratoga, Troy, and Albany.

Q. Does the boat also go to Rutland?

A. No, sir; it goes to White Hall.

Q. Can you state whether or not the Troy train to Rutland connects with any train immediately—morning train?

A. Yes, sir; I think that train connected with us as it does now. I take the sleeping car that comes from Troy on at Essex Junction.

Q. At that time, according to your recollection, the morning passengers from Troy did not lie over at Rutland for the evening train?

A. I think I received those morning passengers from Troy and Albany, with the sleeping car, on my train at Essex.

Q. Has the arrangement been altered since?

A. No, sir.

Q. If a passenger leave Troy in the morning, going north, does the train go through, or does he lie over in Rutland till the night train passes and then goes on?

A. No, sir; that train connects with the Rutland train. Some few weeks ago they did not run in connection with our express train. This irregularity, however, continued but a short time. It was caused by some misunderstanding among the managers of the road.

Re-examination by Mr. PIERREPONT:

Q. I understood you to state, that in the beginning of the navigation the boats were sometimes irregular?

A. Yes, sir.

Q. I understand you to state, also, that this train that you speak of contained the first boat-load of the season; am I right?

A. Yes, sir; the first boat-load on the lake for that season.

Q. I understand you to state that, after you arrived at St. Albans, you never saw these two men again?

A. I am not positive; I was questioned by a gentleman as I was passing to my boarding place.

(Mr. Merrick objected. Objection sustained.)

Mr. Bradley desiring some rule laid down as to the re-examination of witnesses, after the cross-examination had been concluded,

The COURT said: The rule will be, that wherever there is any doubt on the part of one of the counsel as to what the answer of a witness on cross-examination has been, he may repeat the question to the witness, and ascertain from him what answer he had given.

CHARLES H. BLINN, clerk, Weldon House, St. Albans, Vermont; residence, St. Albans, Vermont.

By Mr. PIERREPONT:

Q. What was your employment, and where were you employed, between the 10th and the 15th of April, 1865?

A. Between the 10th and the 15th of April, 1865, I was employed as night watchman in the passenger depot of the Vermont Central depot in Burlington, Vermont.

Q. Do you remember when the first passenger boat of that season landed its passengers at Burlington that season?

A. The first trip made by the boat that season was the 17th of April.

Q. What day of the week?

A. Monday.

Q. Can you tell whether it arrived in time for the passengers to take the train?

A. It was four hours late

Q. At what time did it arrive?

A. About twelve o'clock in the night.

Q. Were you on watch that night in the depot?

A. Yes, sir.

Q. Did you see two men in that depot? If so, tell us about them.

A. There were two men who came in from the boat; one was a tall man, and the other shorter. They requested permission to sleep in the depot until the train left for Montreal.

Q. At what time did the train leave?

A. The train left at 4.20 the next morning.

Q. Where did that boat come from?

A. It came from White Hall, and connects with the cars from New York city. It runs from White Hall to Rouse's Point, on the lake.

Q. State what arrangement, if any, was made between you and them, about sleeping there.

A. They requested permission to sleep on the benches in the depot.

Q Which one made the request?

A. The taller gentleman; he did all the talking.

Q. What did he say?

A. He wished to know if he could sleep there. People very often come along in that way, when the cars from the Rutland road were late.

Q. I am merely asking what he said?

A. He wished to know if he could sleep there. I asked him if he did not wish to go to a hotel. He said he thought not; he was going to Montreal on the early train, and would like to sleep there in the depot.

Q. Did you call him?

A. Yes, sir, in time for the train.

Q. At what time did you call him?

A. I should think 4 o'clock.

Q. In the morning?

A. Yes, sir.

Q. That was on Tuesday?

A. Yes, sir, that was on Tuesday morning, the 18th.

Q. After he went out did you see anything where he had been lying?

A. I did not.

Q. Any article?

A. I did not, until daylight.

Q. Did you at daylight?

A. Yes, sir.

Q. Have you it there?

A. I have, or something that resembles it very much.

Q. Just look at it and state if you recognize it as the same.

A. (After examining it.) I do recognize that as the same handkerchief.

Q. Where, in relation to where the tall man slept, was that?

A. That was near the seat, on the floor, where his head lay.

(The handkerchief was here shown to the jury.)

Q. Is there any name on it?

A. Yes, sir; "J. H. Surratt, 2."

Mr. BRADLEY:

The name is all spelt right; but we cannot admit the handwriting. If it is his, you will have to prove it.

The COURT:

Q. When you picked it up was that name on it?

A. It was.

By Mr. PIERREPONT:

Q. What did you do with the handkerchief after you picked it up?

A. I did not discover the name until three hours afterwards.

Q. What did you do with it after you discovered the name?

A. I gave it to my mother to be washed.

Q. How soon after you discovered the name did you make known the fact that you did discover this handkerchief with the name on it?

A. I made it known during the day, I presume.

Q. To whom did you make it known?

A. I showed it first to the agent of the railroad company at Burlington.

Q. Do you know whether he communicated the fact to St. Albans?

A. I scarcely think he did.
Q. I say, do you know?
A. I do not.
Q. Did you see either of these men after they left?
A. I did not.

SCIPIANO GRILLO, restaurant keeper and musician, residence navy yard, sworn and examined.

By Mr. PIERREPONT:

Q. Where were you living in the month of April, 1865?
A. My residence was at the navy yard.
Q. What business had you here in the city?
A. I kept a restaurant under Ford's theatre.
Q. Did you know John Wilkes Booth by sight?
A. Yes, sir.
Q. When did you first see him?
A. I knew him for five or six years before the assassination. I have been in the profession myself.
Q. As an actor?
A. No, sir, as a musician.
Q. Did you know David Herold, one of those tried for conspiracy?
A. Yes, sir.
Q. Did you know George Atzerodt?
A. By sight.
Q. When did you see Herold last, before the assassination?
A. I saw him near about 5 o'clock.
Q. On the same day?
A. Yes, sir.
Q. And when, before the assassination, did you last see Atzerodt?
A. About ten minutes after that; we walked together down Pennsylvania avenue, and met Atzerodt at the Kirkwood House, on the steps.
Q. Who walked with you?
A. Herold.
Q. How came you to take this walk with Herold?
A. As I was coming down Tenth street I met Herold, and he asked me if I had seen John Wilkes Booth. I told him I had; that I had seen him in the morning about 11 o'clock; that he had some letters which he had received; his letters used to come addressed to the theatre.
Q. Proceed and state what further occurred.
A. I told him that I saw him a little after 4, on horseback; that he stopped in my place and got a drink.
Q. What kind of a horse was it that he rode?
A. A small horse—gray, I believe, as far as my recollection serves me. Herold after this said to me, "Do you know that General Lee is in town?" I told him no, I did not; that I hadn't heard of it. He says "Yes, he is stopping down at Willards'."
Q. This, I understand you, was the day of the assassination?
A. Yes, sir; in the afternoon. Says he, "Yes, he is stopping at Willards'; let's take a walk up there, and find out something about it." We started up, and as we got to the Kirkwood House we met Atzerodt sitting on the steps. He stopped to talk to him, and I walked ahead as far as the corner to wait for him. He stopped with him two or three minutes, and then came back, and walked with me up to Willards'. After we got inside of Willards', Herold met two young men. They talked together awhile; I do not know what they said. As they were in the act of parting, Herold says: "You are going to-night, ain't you?" One of the young men answered and said, "Yes."

Q. In what tone of voice was the talk before that?

A. In a low tone. They were apart to themselves.

Q. Was there anything more said that you could hear other than what you have repeated?

A. No, sir.

Q. What did this man who said he was going to-night do, after saying "yes."

A. Nothing. We left him and went out toward Grover's theatre. I noticed Herold walking a little lame, and says to him, "What's the matter? You are walking lame." He replied, "Nothing; my boot hurts me." When we got behind the park there, he pulled up his pants to fix his boot. I then noticed that he had, run down in his boot leg, a big dagger, the handle of which was four or five inches above the leg of the boot. I said to him, "What do you want to carry that for?" He answered, "I am going into the country to-night on horseback, and it will be handy there." I laughed at him, and said "You ain't going to kill anybody with that?" I left him at the door of Geary's billiard saloon. I went up stairs, and he walked ahead.

Q. Look about in this room and see if you see anybody that looks like the man who said "yes," when Herold asked him if he was going to-night?

A. Well, the gentleman, I believe, is that man, (pointing to the prisoner,) but I don't know. As far as my knowledge goes, he looks very much like him. He had no beard, however.

Q. Had he a moustache?

A. A little moustache, as far as my knowledge goes. I never was acquainted with the man before. Who he resembled I could not exactly remember.

Q. You did not see anybody that told you that General Lee was there, did you?

A. I inquired there, and found there was no General Lee about.

By the DISTRICT ATTORNEY:

Q. Were you in partnership with Mr. Taltaval?

A. Yes, sir.

Q. What sort of a hat did this person have on in Willards' Hotel—the one that resembled the prisoner?

A. As far as my knowledge goes, I believe it was a black hat. It was a slouched hat with a stiff brim.

Cross-examination:

By Mr. BRADLEY:

Q. You say you have been in the profession as a musician of the theatre yourself, and had a restaurant close by Ford's theatre at this time; I will ask you if you know Mr. Gifford?

A. I do.

Q. Do you know Mr. Carlan, who used to be connected there?

A. Yes, sir.

Q. Do you know an actor named Hest?

A. Yes, sir.

Q. On the night of the assassination did you see either of those three, or any of them, out on the pavement in front of Ford's theatre?

A. No, sir. I was not out of the place myself. I was in the orchestra between the first and second acts; but in the third act we had nothing to do, (being always dismissed after the curtain is down,) and so I went out and went inside of my place.

Q. Do you recollect of seeing any soldiers sitting out on the platform there?

A. Not that I remember. There were a great many people out there all the time.

Q. Did you see any one sitting on the carriage platform?

A. I could not tell, because I did not take any notice.

Q. Did you return to the theatre again before the assassination of the President?

A. No, sir.

Q. You were in your restaurant.

A. Yes, sir.

Q. Do you recollect of Booth coming in there?

A. Yes, sir. I was behind the bar at the time.

Q. Was anybody with him?

A. No, sir. He came alone.

Q. How long was that before you heard of the assassination?

A. It must have been between eight or ten minutes, or fifteen minutes; I cannot remember exactly.

Q. Will you describe, if you recollect, what light there was in front of the theatre, and where it was placed that night?

A. We had two lights outside in the street; then there were two lamps in front of the theatre. The light is very brilliant there.

Q. Do you recollect where the clock is placed in that theatre?

A. Yes, sir; in the passage as you enter the building.

Q. On the right-hand?

A. In the centre.

By a JUROR:

Q. In the centre of the doorway?

A. In the centre of the doorway nearest the alley. On the one side is the ticket office, and on the other is the door going into the theatre; and in the centre of that door-way is the clock.

Q. Fixed like the clock in this room?

A. Yes, sir.

At this point the court took a recess of half an hour.

AFTERNOON SESSION.

JOHN T. TIBBETT sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. In Prince George's county, Maryland.

Q. How long have you been living in Prince George's county?

A. I lived there twenty-two years first; I left home then and went soldiering. I went back there and staid twelve months, and I have been here in Washington ever since.

Q. You are now living then in the city?

A. Yes, sir.

Q. In what part of the city?

A. On the island, near the Washington monument.

Q. What is your business?

A. Blacksmithing.

Q. How long have you lived in Washington?

A. I came to Washington about the 10th of December last.

Q. You say you were in the army a portion of the time, in what regiment?

A. The first District Columbia cavalry.

Q. You were enlisted in this city?

A. Yes, sir.

Q. How long were you in the army?

A. I enlisted August 5, 1863, and served until November, 1865.

Q. What was your business in 1863 and 1864?

A. A part of the time in 1863 I was soldiering, and a part of that year I was carrying the mail from Washington to Charlotte Hall.

Q. Where is Charlotte Hall?

A. I disremember whether it is in St. Mary's or Charles county, I was not very much acquainted in those parts.

Q. How long were you engaged in the business of carrying the mail between those two points?

A. I am positive I was more than a month.

Q. State to the jury if you know John H. Surratt, the prisoner at the bar?

A. I do.

Q. How long have you known him?

A. I have known John H. Surratt for the last ten or eleven years.

Q. Have you been in the habit of seeing him frequently?

A. I have, in passing and repassing from Washington down to my father's, before carrying the mail.

Q. Did you know his mother, Mrs. Mary Surratt?

A. I did.

Q. Did you ever see the mother and son together?

A. Yes, sir, I have.

Q. Have you ever heard them conversing in the presence of each other in reference to Abraham Lincoln, late President of the United States? If so, state what you have heard them say?

A. I have heard them conversing but very little together. Mr. John H. Surratt had but very little to say when I would be passing there, but I have heard Mrs. Surratt say——

Mr. BRADLEY. I would like to know upon what ground this evidence is offered.

The COURT. Do you propose to prove the conversation between the prisoner and Mrs. Surratt in reference to Abraham Lincoln?

The DISTRICT ATTORNEY. Yes, sir; the conversation in presence of the prisoner, expressing malice towards the President, and pointing directly towards his assassination.

Mr. BRADLEY. How long before the assassination?

Mr. PIERREPONT. We do not care how long.

Mr. BRADLEY. You will hardly say a conspiracy was formed in 1863.

Mr. PIERREPONT. We will show, before we are through, that the conspiracy was formed in 1863.

Mr. BRADLEY. I think the evidence is not competent, but we waive any objection to it.

WITNESS. I heard Mrs. Surratt say——

Mr. MERRICK. In the presence of the prisoner at the bar?

WITNESS. Yes. I heard her say she would give any one $1,000 if they would kill Lincoln.

Q. State if you heard any other declarations by the prisoner, or by his mother in presence of the prisoner, during this period of time; and if so, state what they were.

A. I do not recollect anything more, except as I would hear them talk occasionally as I would pass, abusing the President; I paid very little attention to them.

The DISTRICT ATTORNEY. I propose now to show by this witness that in speaking of the President of the United States they made use of the most opprobrious language, expressing feelings of personal hostility. I offer this upon the general principle that in a murder case I may show the feelings of the prisoner towards the deceased, and especially that he used expressions of malice towards him prior to the commission of the crime.

Mr. BRADLEY. The witness has already said that he recollects nothing fur-

ther, except that he has heard a kind of abuse of the President. If the object of the gentleman is to know what kind of abuse, it may be obtained possibly in some other way; I do not think in this way it can be reached.

Mr. PIERREPONT. We put the question directly, then.

Q. State what you have heard said.

A. I have not heard much pass; only occasionally I would hear abuse.

Q. State the words that were said.

A. I cannot recollect what the words were. I think, I will not be positive, I have heard Mr. Surratt say——

Mr. BRADLEY. You need not state what you think you have heard.

Mr. PIERREPONT. You understand that we cannot expect you to repeat the precise words, nor do we desire you to state anything that is not strictly in accordance with the truth. You are permitted to state the substance of what you have heard the prisoner say in reference to Lincoln.

WITNESS. Whenever there was a victory, I have heard Surratt say, "The d——d northern army and the leader thereof ought to be sent to hell."

Mr. BRADLEY. We object to that.

Q. In any of these conversations to which you have referred, did you hear the name of Abraham Lincoln mentioned?

(Question objected to as leading. The witness is to be asked simply to state what he heard.)

The DISTRICT ATTORNEY. In any of these conversations did Surratt mention the name of Abraham Lincoln, President of the United States?

(Question objected to as leading.)

The COURT. That is a leading question.

WITNESS. I do not recollect whether he did or not, but at that time I thought——

Mr. MERRICK. No matter what you thought.

Mr. PIERREPONT. Did you in conversation with Mrs. Surratt hear Mr. Surratt say anything in reference to who was the leader of the northern army?

A. I did not.

Q. Did you hear either of them say who was the leader of the northern army?

A. I have heard Mrs. Surratt call the President's name often; but as to Mr. Surratt, I never heard him speak but very little of the President.

Q. Was Mr. Surratt present when she spoke of the President?

A. He then had the mail, carrying it into the room, if I mistake not, to open it.

Q. Was he within close hearing?

A. He was in the room; I think he was within hearing.

Q. In speaking of the leader of the northern army, was there anything he said that indicated who he meant as the leader of the northern army?

A. I do not know who he meant by that word; he only said "the leader of the northern army."

Q. And when his mother was speaking of Lincoln in his presence, he did not say anything about "the leader?"

A. No, sir.

Q. Then, when speaking after victories, at the time he used these words, "That they ought to go to hell, and the leader of the northern army too," who did he say ought to go to hell?

A. He did not say; he immediately turned his back and walked off.

Q. What was the manner in which that was said?

A. He had heard of some victory won by the northern army, or of emancipation, or something of that kind; I disremember what caused him to use the words.

Q. Did you hear him more than once use words to that effect?

A. I do not recollect hearing him say that but once.

Q. Was his mother present?

A. I do not recollect whether she was or not.

Q. Was anybody else present when she said she would herself give $1,000 to have Lincoln killed, except John H. Surratt, the prisoner?

A. I do not think there was any one in the room but him and her.

Cross-examined by Mr. BRADLEY:

Q. At what time did you carry the mail in 1863?

A. In February or March.

Q. Was it a daily mail?

A. A daily mail; yes, sir.

Q. You were not then in the service?

A. No, sir.

Q. Who drove the stage?

A. I drove a buggy, and carried the mail.

Q. Who was the contractor?

A. Mr. Thompson.

Q. How soon after you begun to carry the mail was it that you heard Mrs. Surratt use that language?

A. It was, to the best of my knowledge, near about the first of March.

Q. This was about the middle of your time of carrying the mail?

A. Yes, sir.

Q. What were they talking about?

A. I do not know what they were talking about. I cannot recollect so far back.

Q. You do not recollect any of the conversation?

A. No, sir. They must have been——

Q. Not what they must have been; do you recollect what they were talking about?

A. I recollect of her asking some question about Washington, as she always did. Every day, as I passed backward and forward, they would ask if I had seen blockade runners, or something or other. When I would go down from Washington they would ask how were times in Washington, and when I came up from Charlotte Hall they would ask if I had heard any news from the south?

Q. On this occasion nobody was there but you three?

A. No, sir; not that I recollect.

Q. And you do not recollect what they were talking about when you heard her say she would give $1,000 to any one who would kill Lincoln?

A. No, sir.

Q. That is all you heard or recollect of the conversation?

A. That is all I recollect.

Q. You were then carrying the mail of the United States; did you go and tell anybody of that?

A. I do not think that I spoke that to any one. I paid very little attention to what I heard in that part of the world in those times. I did not notice it.

Q. You never told anybody you heard Mrs. Surratt say she would give $1,000 to any one who would kill Lincoln?

A. No, sir; not until it was somewhere, I believe, about two months ago, I spoke it to a gentleman in Washington here.

Q. Who was that?

A. It was my uncle.

Q. Who is he?

A. Watson is his name—William J. Watson. I suppose he let the cat out of the wallet.

Q. This Mr. Watson is the only one you ever told this to, and that only two months ago?

A. If I mistake not, I told my father of it. I will not be positive.
Q. Where does William J. Watson live?
A. In Prince George's county, Maryland.
Q. How far from here?
A. Thirty-eight miles.
Q. When were you discharged?
A. In November, I think.
Q. Where were you stationed in the spring of 1865?
A. I was with the army of the James, on the north side of the James river.
Q. With General Grant?
A. Yes, sir.
Q. Where were you discharged?
A. At Fortress Monroe.
Q. You say you heard John Surratt say—and you cannot recollect hearing him say it but once—that he wished the northern army and their leader was in hell. Where was that?
A. It was at his own house, or at his mother's house.
Q. Was it while you were carrying the mail, in February or March, 1863?
A. Yes, sir.
Q. You do not know whether that was after some victory, or something about emancipation?
A. I do not know whether he was alluding to emancipation, or whether it was some victory; it was something they were talking about.
Q. Was anybody present then?
A. I think there were some two or three in the room.
Q. Do you remember any of them?
A. No, sir, I do not.
Q. Mrs. Surratt and her son both knew you were employed by the government as a mail carrier?
A. Yes, sir.
Q. Yet you heard these two expressions. Can you describe where Mrs. Surratt was when you heard her make use of that expression?
A. She was in the bar-room, standing, I think, near about the centre of the floor.
Q. Where was he?
A. He was then passing, as near as I can recollect. Whether he had opened the door to go into the room, or not, I cannot state.
Q. Was that to assort the mail?
A. Yes, sir.
Q. Can you state whether he had not gone through?
A. I do not recollect whether he had gone through or not. I am confident he was there just before the time she spoke.
Q. Then she said that to you?
A. Yes, sir, she said that to me.
Q. And so far as you are positive, you do not know whether any one else was present?
A. No, sir, I do not know of any one else being present.
Q. You say you mentioned it to your uncle Watson, and you may have mentioned it to your father. Who did you mention it to afterwards?
A. I cannot recollect who I mentioned it to after that.
Q. Who came after you?
A. A detective, or some one; I do not know who he was.
Q. What sort of a man?
A. He was an aged-looking man, somewhere about thirty-five or forty, I think. I could not call his name.

Q. Did you tell him?
A. No, sir.
Q. Did he not come to ask you what you knew about it?
A. No, sir.
Q. What did he do when he came?
A. He said he had a summons for me, and gave me a summons to appear at the court-house.
Q. Have you that summons with you?
A. I have. [Summons produced.]
Q. Did you go to any other place before you came to the court-house?
A. Yes, sir; I went to a good many other places before I came here.
Q. Did you go to any other place and have a conversation about this business before you came here?
A. He ordered me to report to Mr. Carrington. I went there, and Mr. Carrington told me to be here in the witness-room.
Q. Did you go to anybody else besides Mr. Carrington after that?
A. No, sir.
Q. When was that?
A. Yesterday morning.
Q. Do you mean that you did not tell the detective or Mr. Carrington, or anybody else, about this?
A. No, sir, not that I recollect.
(Examination objected to by the district attorney.
The COURT. The witness may be asked whether the detective gave any promise or offered any reward.)
Q. Did you say anything to anybody yesterday about this matter?
A. No, sir.
Q. You did not tell anybody what you knew about this business, or what you could prove?
A. No, sir, I did not, that I can recollect.
Q. Did I understand you correctly, that you did not mind these expressions much, considering the kind of people that were down there? Were these expressions common in that part of the world?
(Question objected to by Mr. Pierrepont, as too large a scope to inquire about expressions "in that part of the world." Objection overruled, on the ground that it was in explanation of what the witness had already said.)
A. That expression was very common among the people of Prince George's county, Maryland.

ROBERT H. COOPER sworn and examined.

By Mr. PIERREPONT:

Q. Are you now in the army?
A. No, sir.
Q. When did you leave the army?
A. In June, 1865; I was discharged.
Q. Were you in the volunteer service?
A. Yes, sir.
Q. From what State?
A. Pennsylvania, Beaver county, town of Beaver.
Q. Do you live there?
A. Yes, sir.
Q. What is your occupation there?
A. I am a clerk in a store.
Q. When did you enter the army?
A. I entered it in August, 1862.
Q. What was your service?

A. I was in the artillery. I belonged to Thompson's Independent Battery, company C, Pennsylvania artillery.

Q. Where was your company stationed?

A. At Camp Barry, intersection of Camp Barry with the Baltimore pike.

Q. At that time what was your office?

A. I was a line sergeant.

Q. In April, 1865, you were a line sergeant?

A. Yes, sir.

Q. You remember the event of President Lincoln's assassination, of course?

A. Yes, sir.

Q. In the afternoon of that day were you at your camp?

A. Yes, sir.

Q. At what time did you leave your camp?

A. It was after dress parade. Dress parade is about sundown.

Q. This was April 14, 1865?

A. Yes, sir.

Q. After that, what did you do?

A. I came to town.

Q. How far was your camp from Ford's theatre?

A. I presume it is two miles. I do not know the exact distance.

Q. Who did you come in with?

A. I came in with Sergeant Dye.

Q. Where did you and Sergeant Dye go to?

A. We went down to Pennsylvania avenue, and from there we went up Tenth street to Ford's theatre.

Q. What did you go to Ford's theatre for—in consequence of what?

A. There was no particular consequence—we were merely going to camp. We came down Pennsylvania avenue that far, and went up 10th street.

Q. Did you hear anything that made you stop there?

A. No, sir.

Q. When you got to the theatre what did Sergeant Dye do?

A. He sat down on the platform in front of the theatre.

Q. Was there any carriage near the platform?

A. Yes, sir; the President's carriage was standing at the platform.

Q. What did you do?

A. I do not remember whether I sat down when he did or remained standing. I presume I sat down alongside of him, but did not sit but a moment or two.

Q. Then what did you do?

A. I think I moved up the street a few yards towards F street.

Q. Then what?

A. I was walking up and down the street. I walked up to the corner of F street once, crossed over to the other side of 10th street and walked down the other side.

Q. Did you cross back again on the same side the theatre was?

A. Yes, sir; I went across right in front of the theatre.

Q. State whether you spoke to anybody; and if so, to whom?

A. I do not remember correctly. Sergeant Dye was sitting there, and he and I may have had some conversation. We had conversations at different times.

Q. While you were walking about?

A. Yes, sir, we did. When I came to where he was sitting I sometimes spoke to him.

(Counsel for the defence objected to this kind of examination as leading. Objection sustained by the court.)

Q. Did you speak to any other person that you remember?

A. I do not remember that I did.

Q. You spoke of the President's carriage standing by the platform?

A. Yes, sir; we observed that when we went there.

Q Did you see anybody about the carriage? and if so, who did you see?

A. The driver sat on the carriage, and while we remained there a gentleman approached the carriage to the rear and looked in at the rear of the carriage.

Q. Tell what kind of a man he was; I speak of age, height, dress, and appearance?

A. He was a young man, very genteelly dressed; that was all I noticed about him. I did not observe him particularly.

Q. As to height, what would you say?

A. I presume he was about five feet eight or ten inches.

Q. Compared with yourself, what was his height, without going into feet and inches.

A. I think probably he was about the same height I am, as nearly as I can recollect.

Q. Did you see any other man standing there near the wall?

A. I observed a rough-looking man standing near the wall of the theatre.

Q. Tell about his height.

A. I would say, to the best of my recollection, that he was not as tall as the other gentleman, who looked into the rear of the carriage.

Q. Did you see anybody go into the drinking room by the side of the theatre?

A. Yes; I saw a gentleman go into the drinking saloon below the theatre.

Q. Who was he—did you know him?

A. I did not know the gentleman; he was pointed out.

Mr. BRADLEY. That is not evidence.

Mr. Pierrepont proposed to show that this man was pointed out to witness as John Wilkes Booth.

Objection sustained.

(Witness at this point partially fainted, and proceedings were suspended for some moments until he had recovered.)

Q. I will ask you if the same person who was pointed out to you went into the drinking saloon?

A. Yes, sir; I observed him go into the drinking saloon.

Q. Was he pointed out to you, and his name given?

A. Yes, sir.

Q. Did you see him come out?

A. Yes, sir.

Q. After this man came out from the saloon, what did he do?

A. I did not observe him after he came out from the saloon.

Q. Before that, did you hear any one call the time? and if so, what did you hear the last time you heard it?

A. The last time I heard it called was ten minutes past ten. It was after this gentleman came out of the saloon.

Q. Did you hear the time called before that?

A. I cannot recollect distinctly whether I did or not. I have a faint recollection that I did, but I am not certain.

Q. Were you so situated at the time you heard the time called, ten minutes past ten, that you could see the face of the man who called it?

A. No, sir; I was not.

Q. What did you and Sergeant Dye then do? State what occurred.

A. We started round a corner and went to a saloon to get some oysters.

Q. Did anything occur exciting your suspicion at this time?

A. I do not know that I could say that there was anything particular that excited my suspicion.

Q. Did anything occur from anybody else exciting your suspicion at the time?

Mr. MERRICK. Anything that was done?

Mr. PIERREPONT. Anything that was said?

The COURT. He may state anything that was said or done by other parties who were there present acting together, if he saw or heard them.

Q. I want to know whether you had completed your answer in regard to your suspicion?

A. I had.

Q. What did you and Sergeant Dye do?

A. We went around a corner to an oyster saloon and ordered some oysters. Before we had received the oysters a man came running in and said the President was shot.

Q. What then did you do?

A. We ate some of our oysters. I cannot say that we ate them all. We got up and went out to H street, and went down H street to camp.

Q. As you were going down H street to camp, on which side of the street did you go?

A. We went down the right-hand side to somewhere about the Printing Office.

Q. What occurred, if anything, on your way down?

A. As we were going down H street there was a lady raised a window, put her head out, and asked us what was going on down town, or something to that effect.

Q. What was the reply?

A. We told her the President was shot. She asked us who shot him. We replied, Booth.

Q. Was there anything about the house to mark it?

A. I observed there were high steps there.

Q. Have you seen the house since, or passed it?

A. I have seen a house that resembles it.

Q. What is the number of the house?

A. 541 H street.

Q. Have you seen it lately?

A. Yes, sir; a few days ago.

Q. What did you do then?

A. We went on to camp. A little further down the street we met two policemen.

Q. What occurred between you and the policemen?

Mr. MERRICK. That will not do, unless they were part of the conspirators.

Mr. PIERREPONT. They were not a part of the conspirators, but we desire the witness to answer what occurred.

A. Nothing occurred. We met them and passed on. As we met them we told them the President was shot.

Mr. MERRICK. No matter what occurred between you and the policemen; it is not proper to be shown.

Objection sustained.

Cross-examined by Mr. BRADLEY:

Q. In what street was that oyster saloon where you got your oysters?

A. I do not know now. It was after night, and I did not take notice of the street.

Q. Did you cross any street before you turned?

A. No, sir, I think not. We went round the corner of a street.

Q. The first street above the theatre?

A. I cannot recollect whether it was the first one above or first below.

Q. When you came out from there, did you not start directly for the camp?

A. Yes, sir, and we would naturally start out F street to go directly to the camp, but we may have gone along the next street below, and then gone up to F street.

Q. You cannot recollect whether you went towards the avenue or towards H street?

A. If we went towards the avenue we did not go more than to the next street below. I do not recollect which way we went, whether north or south. I know we went not more than two squares to get the oysters, and then went up to H street and went home.

Q. Just after you had ordered your oysters some one came in and said the President was shot. Tell us what was said at that time.

A. We were very much confounded.

Q. What did the man say as he came in?

A. I did not hear him say anything that I know of but that the President was shot. He was a stranger. I did not know him.

Q. He did not say who shot him, or anything more about it?

A. He said J. Wilkes Booth had shot him.

Q. That was immediately after the shooting?

A. Yes, sir; it was just a few minutes after we had left the front of the theatre.

Q. When I inquired particularly as to where the oyster saloon was, it was in order to get at the lapse of time after you left the theatre. What time did it take you to get to the oyster saloon?

A. It could not have been more than a minute or two—a very short time.

Q. Do you recollect whether you did not cross Tenth street on to the other side of Tenth street?

A. No, sir, we did not go there.

Q. You know there is a saloon there?

A. There may be one; I do not recollect.

Q You are sure you turned a corner?

A Yes, sir, I am sure of that.

Q. Do you recollect whether, in going into the restaurant, you had to go up some steps?

A. No, sir, we went straight in from the pavement.

Q. Do you recollect whether you turned to the right or left, at the corner?

A. No, sir, I cannot recollect that.

Q. You say that on your way out to camp, some lady raised a window and called to you to know what was going on down street, and that you had seen that house since; who pointed it out to you?

A. It was not pointed out to me at all.

Q. Did you go up to look at it for yourself?

A. I was told to go along the street to see if I could observe a house that resembles the one described as 541.

Q. Did you find more than one that resembled it?

A. I do not know that I did find more than one that resembled that house.

Q. Was there any house adjoining it?

A. Yes, sir.

Q. Has it an entrance of the same kind?

A. No, sir

Q. What is the difference?

A. There is an alley right at the side of the house where the lady raised the window; there is none by the one adjoining.

Q. Did you observe the alley that night or when you looked at it recently?

A. No, sir; I observed it that night, I observed that the window which was raised was next to the alley.

Q. Was it over the front door?

A. No, sir; it was not over the front door, it was to the left of the front door

Q. East or west?

A. East.

Q. Was there any light in the room?

A. I cannot distinctly recollect. I do not know as I observed that. The moon was shining. I could not say it was shining bright, but it was shining so that I could see a considerable distance ahead on the street.

Q. Was it a clear or a cloudy night?

A. I think it was a clear night.

Q. What time in the night was it?

A. It was probably about twenty minutes to eleven o'clock, as near as I can recollect.

Q. Do you remember quite distinctly about the moon shining and the night being clear?

A. I remember the moon was shining, but to say whether it was shining bright or not I could not tell. I think it was a clear night.

Q. Are you as confident about that as you are about anything else that night?

A. I am confident the moon was shining. As to the night being clear I did not charge my memory with it. I think, to the best of my recollection, though, that the night was clear.

Q. When that man called the time, do you recollect anybody else out in front of the theatre besides yourself and Sergeant Dye.

A. I presume there was.

Q. Do you recollect?

A. Yes, sir; I noticed two or three other gentlemen standing around the door of the theatre, but I did not observe them particularly.

Q. Therefore you cannot tell whether they had been there some time or not?

A. No, sir, I cannot tell.

Q. Were you armed that night?

A. No, sir; I had nothing but a penknife.

Q. You did not carry your revolver wrapped up in a handkerchief?

A. No, sir.

Q. Do you recollect your purpose or object in coming into town that particular night of Good Friday, one of our solemn fasts?

A. We had no particular object in coming into town. The principal thing we came in for was to witness a torch light procession that was passing up the avenue

Q. Did you see that?

A. Yes, sir.

Q. What time did you go up to the theatre?

A. It was about half past nine o'clock. It may have varied a few minutes from that, but not more than two or three.

Q. You staid there until you heard this man call out "ten minutes past ten?"

A. Yes, sir; and immediately after that left.

Q. Did you see anything like a military movement—of men aligning themselves about that place?

A. I did not observe that. I was not standing in front of the theatre; I was walking up and down, and was not paying particular attention.

Q. You say you saw one gentleman go into the saloon; did not you see any one else go in?

A. Yes, sir, I saw several gentlemen go in; that one gentleman was pointed out to me.

Q. Do you recollect whether a good many went in before that gentleman or after he had gone in?

A. I think they all went in before that gentleman. I do not recollect that I observed any go in after that gentleman came out.

Q. Your attention had not been drawn to that gentleman until he went into the saloon?

A. No, sir.

By a JUROR:

Q. When you went to get those oysters to which you refer, did you turn a corner?

A. Yes, sir.

Q. And you do not know whether it was to the right or left?

A. I do not know whether it was to the right or left.

Q. As you proceeded down H street and a party put her head out of a window, could you distinguish the features of the person?

A. Yes, sir, I could see her plain.

Q. Could you see her features?

A. I do not know as I observed the features closely, I just remember looking at the lady.

Q. Could you tell whether she was white or black?

A. Yes, sir.

Q. Young or old?

A. She was not a young lady, and I did not think she was an old lady; about middle-aged.

Q. In what part of the house was she standing, the second or third story?

A. The second story. The window was on a line with the steps.

Q. How many stories are there to the house?

A. I think three.

Q. And she was on a line with the steps; did you go up the steps?

A. No, sir.

Q. Did your companion go on the steps?

A. No, sir, not to the best of my recollection.

Q. Could you see much of her body?

A. No, sir, not very much.

Q. Could you tell whether she was a stout lady or otherwise?

A. She was a very stout-looking lady.

By the COURT:

Q. When you speak of the second story, do you mean that the steps landed at the second story?

A. The second story; yes, sir.

Q Then the house was what you would call two stories and a basement?

A. Yes, sir; that is it, I think.

By Mr. BRADLEY:

Q. Can you recollect whether she had a cap on or not?

A I do not know whether I observed that or not. I think she had not.

Q. Can you recollect whether she had curls by the side of her head, or whether she had her hair brushed back?

A. I think her hair was plain combed back.

The court took a recess till to-morrow at 10 o'clock.

THURSDAY, *June* 20, 1867.

The Court met at 10 a. m.

Mr. Bradley moved that an order be made that Carroll Hobart, Charles Blinn, and Sergeant Dye be recalled, stating that information had come to the knowledge of the defence since those witnesses had been examined, in reference to which they wished to further cross-examine them for the purpose of laying the foundation for contradicting the testimony they had given.

The court stated that he could not entertain the motion until proper affidavits were presented.

E. L SMOOT, residence Charles county, Maryland. sworn and examined.

By the DISTRICT ATTORNEY:

Q Where do you reside?
A. In Charles county, Maryland.
Q. How long have you resided in Charles county, Maryland?
A. Since the 1st of January, 1864.
Q. I believe you are a native of Maryland?
A. Yes, sir, of Charles county.
Q. Do you remember removing your residence from Charles county to Prince George's?
A. Yes, sir; in the fall of 1864.
Q. After your marriage?
A. I was married in 1860.
Q. To what part of Prince George's county did you remove your residence?
A. About a mile from Surrattsville.
Q. During what years were you residing near Surrattsville?
A. 1865 and 1866.
Q. Did you know Mrs. Mary E. Surratt?
A. Yes, sir; I have seen her.
Q. State if you know the prisoner, John H. Surratt?
A. I do.
Q. Do you know him well?
A. Yes, sir; pretty well.
Q. How long have you known him?
A. Some three or four years I do not recollect exactly where I first met him.
Q. Do you recollect of his paying you a visit when you were living in Prince George's county near Surrattsville, some time, I think, in the month of January or February, previous to the assassination?
A. Yes, sir; I recollect he was at my house on one occasion.
Q Which month was that?
A. I disremember now. I know it was in cold weather—soon after I moved there.
Q. How long did he remain with you on that occasion?
A. He went to my house at night, and went away the next morning—he staid the night there, that is all.
Q. Will you state if you had any conversation with him at that time.
A. Yes, sir; I was talking with him.
Q. State what the conversation was.
A. I do not now recollect the exact conversation. We were talking about different things all the while.
Q. Go on and state, if you please, how he employed himself at that time.
A. I saw him very often. I was joking him about his going to Richmond. He never acknowledged to me that he had been to Richmond, but laughed and said: "If the Yankees knew what he had done, or what he was doing, they would stretch his neck."
Q. Describe his manner when he made use of that remark.
A. He smiled, and raised his head up in this way, (witness throwing his head back in illustration of the manner,) and said: "They would stretch this old neck of mine."
Q. What further did he say at that time?
A. I really don't recollect now what took place afterwards.
Q. I will ask you if you did not in those conversations speak to him of going to the city of Richmond?

(Objected to on the ground of being leading. Modified as follows:)

Q. State what he did say in response to anything you said about his going to Richmond.

A. He laughed, but never acknowledged it.

Q. I wish you to state to the jury, if you can, the substance of what he said, and it will be for us to determine whether he acknowledged it or not.

A. I do not recollect now exactly what he said, it has been so long.

Q. State the substance if you can; if you cannot, say so.

A. I do not recollect.

Q. Did he deny that he had been to Richmond?

(Objected to as leading. Question withdrawn.)

Q. Can you recollect of anything that he said at that time?

A No, sir.

Q. Have you had any unkind feelings for Surratt?

(Objected to. Question withdrawn.)

Cross-examination:

By Mr. MERRICK:

Q. When did you move from Charles county to Prince George's?

A. In December, 1864.

Q. Did Surratt come to your house on the occasion referred to alone?

A. Yes, sir; he was alone.

Q. When did you first communicate this fact that you have just stated to the jury?

A. It was after the assassination.

Q. When did you come to Washington city the last time?

A. The other day.

Q. On last Sunday?

A. Yes, sir.

Q. Were you summoned?

A. Yes, sir; I was summoned to appear before the district attorney.

Q. Did you go?

A. Yes, sir.

Q. Did you tell him what you have just stated?

A. Yes, sir, I think I did.

Q. To what official did you go after talking with the district attorney about this matter?

A. I was afterwards examined by Judge Holt; I did not know his name; he told me he was Judge Holt after I had been examined.

Q. Where was it that you were examined before him?

A. Up at Winder's building.

Q. Opposite the War Department?

A. Yes, sir.

Q. Who were in the room?

A. Judge Holt and another gentleman; I do not know his name.

Q. Was what you said taken down in writing?

A. I think so.

Q. Were there any other witnesses in this case that you know of up there at this time?

A. Yes, sir; nine others went up with me.

Q. How often have you been up before Judge Holt?

A. Only once.

Q. Were you present at the examination of any of the other witnesses?

A No, sir.

Q. Do you know Mr. John T. Davis, from Charles county?

A. Yes, sir.

Q. Have you ever said to Mr. Davis or any one else that they had offered to pay your expenses at the hotel here and give you some ten or fifteen dollars a day if you would testify?

A. No, sir; I said that a certain gentleman had told me that he would guarantee me, if I would do what was right. I asked him when I got here if he had me summoned? He said he did not know anything about it. I told him I was losing a good deal by being up here. "Oh," says he, "I will see you all right; you will get ten dollars a day if you will do what is right."

Q. Who was that?

A. It was Townly B. Rodey.

Q. Was he getting up testimony in this case?

A. Not that I know; I do not know anything about it.

Q. Didn't you state that Townly Rodey had brought you a message from some official personage that you would get ten dollars?

A. Yes, sir; he told me that he had seen Mr. Wilson, and had made it all right.

By the ASSISTANT DISTRICT ATTORNEY:

Q. Have not you been to Mr. Merrick's office since you have been in the city?

A. I passed Mr. Merrick's office yesterday morning.

Q. How often have you been to Mr. Merrick's office?

A. Only once.

Q. Have not you been talking with Mr. Merrick on the street about this case?

A. Yes, sir; he asked me some questions about it. He said he was after me with a sharp stick, or something of that kind.

JAMES M. WRIGHT, recalled:

By the DISTRICT ATTORNEY:

Q. You have already stated that you are a chief clerk in the office of the Judge Advocate General?

A. Yes, sir.

Q. State what those papers are that you hold in your hand.

A. This is one of the exhibits of the conspiracy trials. It is marked "Exhibit No. 63," Jacob Thompson's account with the Ontario Bank, Montreal. This paper is marked "Drafts on the Ontario Bank for £61 12*s.* 10*d.*" The drafts are enclosed in this envelope, which is marked "Exhibit 37." This is the bank book of J. W. Booth, marked "Exhibit 11."

Q. Those papers are all exhibits belonging to the conspiracy trials, and have been in your possession as chief clerk?

A. Yes, sir.

Cross-examination by Mr. BRADLEY:

Q. Have you had charge of those conspiracy files?

A. Yes, sir.

Q. Is there among those files a paper or package marked "Diary of J. Wilkes Booth?"

A. It has never been on file with the records of the trial of the conspirators.

Q. Do you know if that diary has ever been in your office?

(Objected to by the assistant district attorney on the ground that the examination was not responsive to anything that had been brought out on the examination in chief, nothing having been said on that examination about the diary of Booth. Objection sustained.)

ROBERT ANSON CAMPBELL, Teller Ontario Bank; residence, Montreal, Canada.

By the ASSISTANT DISTRICT ATTORNEY:

Q. What is your occupation?

A. I am teller of the Ontario Bank, Montreal.

Q. How long have you been teller there?
A. For some eight or nine years.
Q. You were teller there, then, in 1865?
A. Yes, sir.
Q. Will you examine this paper contained in an envelope marked "Exhibit No. 63," and state what it is.
(Mr. Bradley objected to the introduction of any proof in regard to Jacob Thompson's accounts in Canada as being irrelevant.
The COURT. It is just one of those cases where we have to admit the testimony for the time being; but if the prosecution fail to connect it in any way with the prisoner, it will be peremptorily ruled out.
To this ruling Mr Bradley reserved an exception.)
Q. State what that paper is.
A. It is the account of Jacob Thompson with the Ontario Bank, Montreal.
Q. For what time?
A. Commencing on June 28, 1864—May 20th really, for that is when he made his first deposit—and ending April 11, 1865. The balance was then struck, but the account was not closed.
Q. What was the balance then still left to his credit?
A. $1,766 23.
Q. Examine the papers marked "Exhibit 37," and state what they are.
A. This is a bill of exchange in favor of J. Wilkes Booth for £61 12*s.* 10*d.*, dated 27th of October, 1864.
Q. Is that in your account?
A. No, sir. This is a bill of exchange which I sold Mr. Booth on the 27th of October, 1864.
Q. That is not in Thompson's account?
A. No, sir; it is a different thing.
Q. J. Wilkes Booth came and bought a bill of exchange on New York from you?
A. Yes, sir.
Q. What is the date of it?
A. 27th of October, 1864; in three sets.
Q. Indorsed and paid?
A. Not indorsed. It was payable to Mr. Booth's order, but I see it is not indorsed.
Q. Neither of the three?
A. No, sir.
Q. They are still outstanding claims of yours on the Bank of New York?
A. No, sir; it is sterling on our agents in London.
Q. It has not been paid yet?
A. No, sir; still outstanding I do not know who will get the money.
Mr. BRADLEY. We will try and get it. He is one of the parties to this suit.
Q. State what that is—Exhibit 11.
A. This is a pass-book showing the account of J. Wilkes Booth with the Ontario Bank.
(The counsel for the prisoner desired it to be understood that they objected to the production of each of the three exhibits; and that, each said objection being overruled, they reserved an exception to the ruling in the three cases respectively.)
Q. State what entry is in that.
A. It is a deposit of $455, made October 27, 1864.
Q. Deposit by whom?
A. By J. Wilkes Booth.
Q. Is his handwriting there?

A. No, sir.

Q. On the certificate?

A. No, sir; not on the certificate at all.

Q. Will you examine this account that you first looked at, and state what it shows as to deposits made on the 6th of April, and what those pencil-marks indicate in Thompson's account?

A. There are three entries on the 6th of April—one for $7,098; that is a check.

Q. State what that was on.

A. That was deposited in a check. (After examination,) No, sir, this is not a deposit. It is a check drawn. He drew a check, which we accepted that day, for $7,098. Then we gave him a deposit receipt for $180,000, for which he gave his check.

By Mr. PIERREPONT:

Q. That was a deposit with you by a check?

A. We gave him a deposit receipt in place of keeping this deposit in our ledger, for which he paid us by check, of course.

Q. What I want to know is how he got it in your bank—whether by bill or check.

A. He deposited sterling exchange on London.

Q. That $180,000 was deposited on sterling exchange?

A. No, sir. Having a large amount to his credit, he just drew this check of $180,000 against his account.

Q. What was his balance on the 6th of April?

A. The papers don't show it. I should say about $200,000 before drawing this check.

Q. When was this $180,000 drawn?

A. On the 6th of April.

Q. And for it you gave sterling?

A. No, sir. We gave a deposit receipt. He wanted that so that he could make use of it in a foreign country if he wanted to go there or anywhere else.

Q. He gave a check for the receipt?

A. Yes, sir. You call them here, I believe, certificates of deposit.

Q. What do those pencil-marks there indicate?

A. Those show the amount of exchange he purchased on the 8th of April.

Q. You will observe there that on the 6th, in that second line, there are some pencil-marks?

A. That is "D. R.," deposit receipt.

Cross-examination:

By Mr. BRADLEY:

Q. By whom were those pencil-marks made?

A. They were made by myself.

Q. Was the account made out by you?

A. No, sir; but I examined it.

Q. Is this pencil memorandum, "Close order and deposit receipt and return," in your handwriting?

A. No, sir.

Q. Further down is another memorandum—pencil figures?

A. This is a check in favor of our counter branch for a certain amount.

Q. Is that in your handwriting?

A. No, sir.

Q. Have you any personal knowledge of those pencil-marks, when they were made, and by whom?

A. O, yes, sir; made out by the party who made out the account—the bookkeeper.

Q. Just below there are three or four other entries; are they in his handwriting also?

A. Yes, sir.

By Mr. PIERREPONT:

Q. This account I see is headed "Jacob Thompson," which doesn't convey a very definite idea as to who Mr. Thompson is?

A. He passed in Canada as the Hon. Jacob Thompson.

Q. From where?

A. From the United States.

JOHN LEE—residence near Vicksburg, Mississippi—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. Between Vicksburg and Meridian, Mississippi. I have been residing there for the last twelve months.

Q. Where did you live previous to emigrating there?

A. Here, in Washington.

Q. How long did you live in Washington?

A. Somewhere in the latter part of 1862 I was detached from my regiment and brought here. I was detached from the ninety-fifth New York regiment and ordered on duty at the War Department, under Colonel Baker.

Q. Had you resided in New York before you came to Washington.

A. Yes, sir.

Q. You enlisted as a soldier in the ninety-fifth New York?

A. Yes, sir; I was sergeant of company E.

Q. How long were you in the army?

A. I enlisted for three years, and was in three years, lacking ten days.

Q. In what service were you detailed?

A. In the secret service, under Colonel Baker, provost marshal of the War Department.

Q. You were a detective officer under Colonel Baker?

A. Yes, sir.

Q. In that capacity, did you have opportunities of becoming acquainted with the people here in the city?

A. Yes, sir; I got more or less acquainted with everybody who lived here in Washington. I was over the streets every day, not excepting Sunday, on public and private business for the departments, making arrests, looking into the departments, and so on.

Q. Did you know John H. Surratt, the prisoner?

A. I knew John H. Surratt by seeing him.

Q. Look at the prisoner and state if you recognize him?

A. Yes, sir; I recognize that young man; but he did not have that "goatee" on when I saw him.

Q. State if you saw him on the 14th of April, 1865; and if so, where you saw him, and about what time in the day.

A. On the 14th April—I was at that time with Major O'Beirne, the provost marshal of the District of Columbia—I went to the Washington depot with reference to men who were deserting. I was not looking for deserters myself, but was chief of the men employed for that purpose under Colonel O'Beirne.

Q. What force was that?

A. The detective force of the Provost Marshal's department. I went down to the depot, and on my way back, at the corner of Sixth street, I stopped a minute to answer a question—the man who asked it I do not know—but he inquired about some young fellow who was in my regiment. When I left him I continued on up the avenue, the right-hand side going up towards Thirteenth

street. When near Mr. Stinemetz's hat store I passed a man whom I took to be John H. Surratt. He was coming this way, and I was going in an opposite direction. It was between Franklin's spectacle store and Stinemetz's hat store.

Q. Are you satisfied the prisoner was that man?

A. To the best of my knowledge that is the man. (Pointing to the prisoner.)

Q Had you seen him frequently before?

A. Not as frequently as I have seen some people about Washington.

Q. How often had you seen him? Did you know him well by sight?

A. I should suppose I had seen him a dozen times before that.

Q. Was he walking rapidly or slowly at that time?

A. He was going in an ordinary gait. I was going fast myself, walking quickly.

Q. I will ask you if, on the 15th—the next day—you were called upon to make any examination, or any investigation, into this matter?

A. I was. I went to the Kirkwood House. Major O'Beirne got an order to bring all his force to the Kirkwood House to protect Mr. Johnson. I got an order from Major O'Beirne to go up on top of the house to see that nobody came in from the roof. I detailed men to all parts of the house; and then went up on the roof to look around. I afterwards went down into the clerk's office, or book-stand in the office, when a young man came up to me. Getting certain information, I went up to room No. 126, and finding it locked, endeavored to get the key, but it could not be found. I then got Mr. Sprague to go up stairs with me. When we got there I asked him if we should burst the door open. He said he did not know; that it might make trouble. I told him that I had an idea that everything was not right about that room. I finally burst open the door and went in. Finding a pistol, I went down stairs to hunt for Major O'Beirne; I found he was in a great hurry to go up the street; and so he left me to manage the matter myself. I then took this young man, Mr. Jones, whom I found in the office, up stairs with me. On the wall I found a black coat hanging, in the pockets of which was a spur, and also a bank book of J. Wilkes Booth.

Q. Look at that book and state if that is it. (Handing witness bank-book of J. Wilkes Booth.)

A. That is the book.

Q. What else did you get?

A. It is very difficult for me to get at these things as I did before, because it is a long time ago, and I have not kept any notes whatever.

Mr. PIERREPONT. It is not of the least consequence that you should state them in the same order.

WITNESS. I got from the pockets also a handkerchief, and a half stick of black licorice. I then went to the bed, lifted the covering, and got, between the sheet and the mattress, a large bowie-knife, with a red case around it. I then hunted the room all over to see if I could find any letters or papers. I did not find anything else. I took the coat, and these things that I had found, and went down stairs to the parlor, right next to the Vice-President's room. I kept them until Major O'Beirne came in. Major O'Beirne picked them up and carried them into Mr. Johnson's room; showed them to him, and then brought them out and gave them to me. I locked them up at my own house.

Q. State where Mr. Johnson's room was with reference to this room from which you took these things?

A. It was on the next floor above.

Q. Which was above, President Johnson's room or No. 126?

A. Mr. Johnson's room was on the second floor facing——

Q. On what floor was this other room?

A. The third floor.

Mr. PIERREPONT. Before you go any further I want to fix one thing. I understand from my associate that the witness said he found this paper (holding

up a piece of paper) in this bank-book. I did not so understand him. I want to ascertain whether that is so.

Q. Was this paper in the book at the time you found it?

A. I never saw that paper before now.

Q. Go on and state what else you did with these things.

A. The next day Major O'Beirne came and gave me an order to hook up the horse and wagon and take this bundle to Secretary Stanton's.

Q. Was that the same day?

A. That was the next day—Sunday. I went and showed them to Mr. Stanton, and told him we had showed them to the President. He was very angry.

DISTRICT ATTORNEY. Never mind about that

WITNESS. I gave him the things and he handed them back to me. He examined them all carefully except the pistol. He didn't care to look at that. He told me to roll them up and keep them in my possession until the military commission tried the parties at the arsenal. I was then sent for to bring those things, and I took them up to Judge Holt's office and delivered them to Judge Advocate Burnett.

Q. That was the last you saw of them?

A. Yes, sir; until I saw them in court. I see some of them here now.

Q. Have you seen them within a day or two?

A. No, sir; I have not seen them since I left them in possession of the government.

The court here took a recess of half an hour.

AFTERNOON SESSION.

JOHN LEE cross-examined:

By Mr. BRADLEY:

Q. You say you were a detective officer in the force of Colonel Baker, in the spring of 1865, and then in that of Colonel O'Beirne?

A. No, sir; not in 1865.

Q. When did you go under Colonel O'Beirne?

A. I could not give you the exact date, it was before 1865, I think; I was with Colonel Baker before 1865.

Q. How long were you with Colonel Baker?

A. A year or more.

Q. What year?

A. 1863, I think, and 1864.

Q. Can you come no nearer to it?

A. No, sir; not by my memory.

Q. That year was embraced in the years 1863 and 1864?

A. I left Aquia Creek at the first burning of the place by General Burnside. I came to Washington and went to Colonel Rucker's office (now General Rucker) with Captain West, who was post quartermaster at Aquia Creek. While I was there Colonel Baker met me and asked me what I was doing. I told him we had all left Aquia Creek; that Fredericksburg was all gone, and that we had come to Washington.

Q. I do not desire you to go over all that; what I wanted to know was when you left Colonel Baker and went with Colonel O'Beirne?

A. I think it was in 1864.

Q. What time of the year?

A. I cannot recollect the exact time.

Q. Was it in the winter, spring, or fall?

A. I cannot tell that.

Q Did you go directly to Colonel O'Beirne?

A. No, sir.

Q. What did you do after you left Colonel Baker?

A. I went with Captain Putnam. Major O'Beirne succeeded Captain Putnam.

Q. What was Captain Putnam's duty?

A. He was captain of the detective force in the provost marshal's office. I got my discharge from my regiment a few days before I went with him. The Secretary of War gave me my discharge some ten days before my time was out to take an office, but I did not accept the office.

Q. Were you in the military service while you were under Baker?

A. Yes, sir; in the United States military service.

Q. What was your position?

A. Sergeant.

Q. And you then went with Captain Putnam. Where was his headquarters?

A. At the corner of 19th and I streets.

Q. State whether your duties confined you very much to that office, or whether you were much about town while you were with Captain Putnam.

A. I was all the time on duty going about—very busy.

Q. Can you state when you went under Colonel O'Beirne?

A. Captain Putnam resigned and Colonel O'Beirne took his place. It might be six months before the assassination, and it might be a little more than that.

Q. That was in the fall of 1864?

A. Yes, sir.

Q. And you cannot tell how long you were with Captain Putnam?

A. No, sir; Captain Putnam was not there long after I went with him.

Q. A month, six weeks, or two months?

A. O yes, sir; more than that. I suppose I was there with Captain Putnam about six months.

Q. And with Colonel O'Beirne about six months, which would make a year before the assassination?

A. About that time.

Q. And you left Baker some time in the spring of 1864?

A. I cannot tell; I do not know the date when I left Colonel Baker. If I had my discharge I could tell.

Q. When did you first see Surratt?

A. The men were sent round looking after people who were carrying medicines through the lines. Sometimes there would be fifty notices and sometimes three or four notices of people running the blockade, carrying quinine, morphine, &c. There was a good deal of excitement about it among all the men on the force. They were sent to hunt up these men. Every now and then some one would be pointed out as a suspicious person.

Q. Did you understand my question—when did you become acquainted with Surratt?

A. It was during this time. We were looking after parties carrying quinine and morphine.

Q. What time was that?

A. The time myself and the men arrested a man by the name of Bayley and a Miss Buckner.

Q. I want you should tell about what time it was.

A. I could not tell without seeing Colonel Baker's books; I cannot recollect the dates.

Q. Do you recollect where Surratt was pointed out?

A. The first place he was pointed out to me was down by the Baltimore depot, Washington.

Q. How long was that before the assassination?

A. I could not tell how many months; it was a long time before the assassination.

Q. Was he riding, walking, or sitting? Where was he? State whether anybody was with him.

A. I do not recollect whether there was or not.

Q. When did you see him afterwards?

A. I saw him on the avenue, and I saw him on the road going across the Eastern Branch bridge.

Q. How often?

A. Once or more; I do not recollect.

Q. Did you know where he was living then?

A. No, sir; I did not.

Q. You did not know whether he belonged here or somewhere else?

A. No, sir; I could not say whether he belonged in the city of Washington or outside the city. I had no particular notice about him, more than generally that he was a rebel.

Q. Was it not your duty to find out who he was and where he belonged, in order to prevent him as well as others from going through the lines?

A. The same as any other person that there was any suspicion about.

Q. On that sort of duty did you not find out who these people were, a great many of them?

A. I did.

Q. Was it not a part of your duty to find out who they were, and where they belonged?

A. Some of them I found out the exact locality. It was our duty, if we had a special order to that effect.

Q. When you were informed that such a person was carrying passengers or medicines through the lines, was it not your duty to ascertain who they were and where they belonged, without any special orders?

A. Not particularly. We got our orders through the office, and when they related to any particular party, if we could not get names, we took a description.

Q. When they were pointed out, was it not a part of your duty to find out where they were, and who they were?

A. Yes, sir, if there was any special charge against them.

Q. The charge against Surratt was that he was carrying quinine, calomel, &c., to the enemy. Did you ever try to find out who John Surratt was?

A. No, sir; I did not.

Q. Ordinarily when you saw him, was he riding or walking?

A. I never saw him on horseback at all, nor in a carriage.

Q. Then when you saw him going down towards the navy-yard bridge, was he on foot?

A. Yes, coming up from the Eastern Branch bridge on foot.

Q. What was his ordinary dress?

A. I could not tell you that.

Q. You could not tell how a man you were cautioned against was dressed, or where he was located?

A. I did not tell you I was cautioned against Surratt.

Q. Did you not tell us he was pointed out as one of those people suspected of passing through the lines, and a rebel?

A. I did not say he was carrying anything through the lines.

Q. You did not say he was pointed out as a suspected person going through the lines, and a rebel?

A. I said that he was liable to be pointed out to me, or to any of the men, as a person suspected.

Q. Did you say he was liable to be pointed out as a person suspected, or did you say he was pointed out as a person suspected?

A. I said he was pointed out the same as others were to me, as a suspicious man.

Q. As a suspicious person about going through the lines?

A. Yes, sir.

Q. Then he was pointed out to you as a suspicious person?

A. Some of the men said "this man goes through the lines."

Q. Did you observe whether he wore the same sort of dress commonly or not, or whether he changed his dress; whether there was any disguise?

A. No, sir; I never saw any disguise at all.

Q. Did you ever see any change of dress that attracted your attention?

A. No, sir; I did not.

Q. You could not tell how he was dressed?

A. No, sir; there was nothing that induced me to pay particular attention.

Q. There was nothing that induced you to mark a man you were on the look-out for?

A. I was not on the lookout for Surratt.

Q. You were not on the lookout for a man who was suspected?

A. Not especially.

Q. Were you not on the lookout for other men suspected of going through the lines?

A. No, sir; there were a great many men pointed out that I never paid any particular attention to.

Q. Then, did you pay any attention to Surratt?

A. No, sir.

Q. Can you tell whether he wore a goatee, whiskers, or moustache at that time?

A. I think he had a little beard on his lip; I am not positive about that.

Q. Can you tell anything about the color of his moustache or hair?

A. It was the same color it is now, sandy.

Q. I am not speaking of what it is now. Can you, without looking at him, from the picture in your mind, say whether he had a moustache or beard, and what was the color of his hair?

A. I think he had a little beard on his upper lip, a moustache, and that it was sandy in color.

Q. Is that from memory or from what you see now?

A. No, sir; it is not from what I see now at all.

Q. Now tell us what notice you had ever taken of him?

A. They would go along and say, "There goes a rebel;" I would look at him so that I would know him again when I saw him.

Q. You would know him so well that, in the course of a year or two, having never exchanged a word with him, and seeing him pass by in the street, you would say that was him?

A. I might be mistaken in that, too.

Q. Was there anything on the 14th of April in your mind to direct your attention particularly to John H. Surratt?

A. No, sir.

Q. Did you meet him?

A. I passed him on the street.

Q. How was he dressed?

A. I cannot tell

Q. Did you turn around and look at him?

A. No, sir; I did not.

Q. Were you examined before the military commission in the conspiracy trial after the assassination?

A. Yes, sir; I was a witness on that trial.

Q. Did you, as a witness on that trial, say one word of having seen John H. Surratt on the 14th of April?

A. I never was asked the question.

Q. Did not you know, in your office as detective, and especially in your relation with the apprehension of the conspirators, that it was most important to find out whether John H. Surratt was here or not?

A. No, sir; I did not think so.

Q. Did you tell any human being that you had seen him?

A. No, sir; I do not know that I did.

Q. Before you appeared as a witness on the conspiracy trial, were you examined as to what you knew by any officer of the government?

A. I had some questions asked me by a deputy judge advocate.

Q. By whom, Mr. Bingham?

A. Colonel Burnett, I think.

Q. Did not you know that it was of first importance to find out whether John H. Surratt was concerned in that assassination or not?

A. No, sir; I had no thought about John H. Surratt. The only man I had special thought about was Atzerodt.

Q. When did you ever think of John H. Surratt as connected with it?

A. I heard general talk about the complicity of John H. Surratt, but I had nothing to do with him; my whole business was after Atzerodt.

Q. Was not your business to find out every man connected with the assassination?

A. My whole time was taken up with Atzerodt.

Q. Was it not your business to communicate all the information you had upon the subject relating to any man charged with that conspiracy?

A. It was my business to find out anything against him.

Q. Did not you know that John Surratt was charged as one of the conspirators?

A. I heard it said so.

Q. Was it not a common subject of conversation?

A. Yes, sir, it was.

Q. Was there not evidence about him on the trial?

A. No question was ever put to me.

Q. Was anything said by you on the trial about Surratt?

A. I do not know that there was.

Q. Did you ever communicate, then, to any human being about your having seen Surratt?

A. No, sir; I do not think I told any one of having seen Surratt until I was brought here, at this time.

Q. Who did you tell then?

A. I told one or two of my friends or acquaintances.

Q. Who else did you tell besides a friend or two of yours?

A. I do not know that I told anybody else.

Q. Were you not interrogated as to what you could prove on the trial by an officer of the government?

A. Here? No, sir

Q. You were not examined by the district attorney, or anybody else, here?

A. I simply said to him, "How do you do, sir;" and I spoke to one of the other counsel and asked him who I was a witness for.

Q. You did not tell anybody connected with the government about your having seen John H. Surratt on the 14th of April, at any time since you have been here?

A. Yes, sir, I did.

Q. Who did you tell?

A I told the district attorney.

Q. I thought you did not tell the district attorney?

A. Yes, sir; I told Mr. Wilson.

Q. I asked you if you did not tell the district attorney and you said "No." Now you correct yourself.

Mr. PIERREPONT. O, no; he did not correct himself.

Mr. BRADLEY. I beg your pardon, I am speaking to the witness. If you have any objection, make it to the court.

Mr. PIERREPONT. I do object.

The COURT. Go on with the cross-examination.

Q. Now I ask you, did you not tell the district attorney about this?

A. May-be I can give you the exact words. He asked me if I was acquainted with Surratt. I told him "Yes." He asked me if I was well acquainted with him. I told him "No, only by sight." He then asked me when I last saw him. I told him, "On the 14th of April."

Answer objected to by Mr. Pierrepont.

Mr. BRADLEY. I endeavored to stop him from stating his conversation. I merely wanted to know whether he did not communicate to the district attorney about his having seen Surratt.

Mr. PIERREPONT. We do not object to that.

Q. Now I want to know who else you told it to besides the district attorney.

A. Mr. Wilson.

Q. Who else?

A. I think I told it to Mr. Butler.

Q. What Butler?

A. Ferdinand Butler.

Q. Who else?

A. I may have made a remark out in the witness-room.

Q. I mean before you came to the court-house at all?

A. I did not speak to anybody before I came to the court-house.

Q. When did you come to the court-house?

A. I came here on Sunday morning.

Q. And you did not tell anybody, except the district attorney, what you knew about this matter, unless you spoke to Mr. Butler about it.

A. I may have spoken to two or three persons about it.

Q. Who else do you recollect except Mr. Butler?

A. I recollect, I think, Mr. Tucker.

Q. What Tucker?

A. He lives at Mr. Butler's, I believe.

Q. When did you tell him about it?

A. I think it was yesterday.

Q. And you do not recollect anybody else?

A. Nobody, that I recollect now.

Q. Did you speak of it to any one who wrote it down or made a note of what you said?

A. Not to my knowledge. I did not see anybody writing. It may have been done behind me.

By a JUROR:

Q. The first time you saw Surratt, who pointed him out?

A. Some one of the men of the force. I do not know who it was. These things would happen sometimes a dozen times a day. It is the peculiar business of the men to go about all the time. They do not know sometimes who they are looking for, and it is a common thing for them to remark, seeing a person pass, that is so and so.

Q. Do you recollect the date when you first saw him?
A. No, sir.

By Mr. BRADLEY:

Q. What time in the day was it that you overtook Surratt on the avenue?
A. I think, as near as I can tell, it was between 3 and 5 o'clock. I wanted to get up to the office.
Q. And you were walking rapidly past him?
A. Going at my ordinary gait.
Q. Did you not say you were walking fast?
A. I always walk fast.
Q. You were walking fast and he was walking slow?
A. Yes, sir.
Q. This was between 3 and 4 o'clock, as well as you recollect?
A. Between 3 and 5.

By a JUROR:

Q. I understood you to say that he was going down?
A. I was going on the right-hand side of the street. He was on the left-hand side of the pavement, near the curb.
Q. Then you met him; you did not pass him?
A. I passed him on the sidewalk. He was going the other way from what I was.
Q. You said you were walking rapidly and he was walking slowly. How fast was he walking?
A. He was walking ordinarily along; not so fast as I did.
Q. You do not recollect the time when you first saw him?
A. No, sir; I do not.

SAMUEL A. RAINEY sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?
A. In Washington. I have lived in Washington about twenty years.
Q. What is your business?
A. My business for the last twelve or fourteen years has been dealing in horses and keeping a livery stable.
Q. Where has been your livery stable the last four or five years?
A. On Sixth street.
Q. In the same place?
A. No, sir; in two different places.
Q. State where it was from the 1st of January to the 1st of June, 1865.
A. It was on Sixth street, south of the avenue. I did not keep the stable at that time. I was there, and kept my horses there occasionally.
Q. When did you first take an interest in the stable?
WITNESS. Which one?
Mr. PIERREPONT. Either.
A. I could not say exactly the date.
Q. It was as early as January, 1864?
A. It might be. I am not positive. I have been in business all the time; but I am not positive, from the fact that I never kept any account of it.
Q. What do you think about its being in January, 1864?
A. I do not think I had the stable in 1864
Q. When did you first have an interest in any stable?
A. I have had an interest in stables for the last twelve years.
Q. When in '64, and in what stable were you interested?

A. I was keeping a stable at the corner of Sixth and C streets, and was buying and selling some horses.

Q. When did you take this stable you occupied in 1865; when was it first opened by you?

A. I took it the 1st of January, 1865, to the best of my recollection.

Q. Who took it with you?

A. Dr. Cleaver; his name is William E. Cleaver.

Q. Was he a veterinary surgeon?

A. Yes, sir.

Q. How long did you and Cleaver continue together in that business?

A. To the best of my recollection some eight or nine months; not quite a year.

Q. He and you, from the 1st of January to the 1st of June, were partners?

A. Yes, sir.

Q. Were you equal partners?

A. Yes, sir.

Q. Did you keep the books of the firm?

A. They were kept by Dr. Cleaver. My health was bad during that year. I was very little at the stable; and it is bad still. I was there off and on, but not regularly.

Q. Did you know John Wilkes Booth?

A. Only by name. I was not acquainted with him.

Q. Did he come to your stable, and did you see him there two or three times?

A. I remember seeing him there once or twice; once that I remember.

Q. I suppose you know what Surratt came there for; if so, state.

A. Yes, sir. It is customary for men coming there to have business, generally.

Q. What was his business?

A. Surratt came there on one occasion to get a horse.

Q. At what time was that?

A. I do not remember. My partner hired the horse.

Q. You saw him there?

A. I saw him there.

Q. Have you any memory of what kind of a horse that was?

A. To the best of my recollection it was a bay mare.

Q. Do you remember what time in January it was, or whether it was in January?

A. I do not.

Q. Was it in January or February?

A. I cannot say.

Q. It was after the 1st of January?

A. It was after the 1st of January, for we did not take the stable until the 1st of January.

Q. You say your partner kept the books; look at the books now shown you and state whether these are the books of the firm?

A. Yes, sir; these books have been used at the stable.

Q. Whose handwriting are they in?

A. Dr. Cleaver's, principally.

WILLIAM E. CLEAVER sworn and examined.

By Mr. PIERREPONT:

Q. Are you the Dr. Cleaver who kept a livery stable in 1865 on Sixth street?

A. Yes, sir.

Q. Near what place?

A. Near the corner of Maryland avenue; between B street and Maryland avenue.

Q. When did you commence there?

A. In January, 1865.

Q. Who kept the books of the firm?

A. I did.

Q. Who was your partner, if you had any?

A. Mr. Rainey.

Q. Did you see him on the stand?

A. No, sir; I was not here.

Q. Samuel A. Rainey, was it?

A. Yes, sir.

Q. Have you seen him lately?

A. Yes, sir; I saw him in the witnesses' room just now.

Q. How long did he and you continue as partners?

A. About eighteen months.

Q. What was your business then?

A. Livery stable and veterinary surgeon.

Q. How long had you been a veterinary surgeon?

A. Seventeen years in this city.

Q. How long have you lived here?

A. About seventeen years.

Q. Were you educated as a veterinary surgeon?

A. Yes, sir.

Q. In 1865, or prior to 1865, did you keep any other stable in any other place?

A. Yes; I kept a stable on B street.

Q. Did you know J. Wilkes Booth?

A. Yes, sir.

Q. Did you know John H. Surratt?

A. Yes, sir.

Q. How long have you known John H. Surratt?

A. About twelve years, I think—ten or twelve years.

Q. Have you had a speaking acquaintance with him?

A. Yes sir.

Q. What was the mode in which you addressed him and he addressed you?

A. He came down to hire a horse of me at the time Booth kept his horse with me.

Q. What did you call him and what did he call you?

A. I usually called him "John," and he called me "Doc."

Q. When did Booth first bring his horse to you to keep?

A. The 1st of January, 1865—the day we got the stable.

Q. And to that stable on Sixth street?

A. Yes, sir.

Q. What was the health of your partner at this time?

A. He is sickly all the time.

Mr. BRADLEY. What on earth has all this to do with this case?

The COURT. I cannot see its relevancy.

Mr. PIERREPONT. I think your honor will see some relevancy before we are through. It is a single fact proven by itself.

Q. State what horse Booth brought.

A. He brought a one-eyed bay horse first.

Q. What next?

A. About ten days afterwards he brought a light bay horse, very light bay.

Q. Did he bring any others?

A. No, sir.

Q. At what time was this?

A. In January, 1865. I think you will find it in the book there.

Q. State whether you saw him and Surratt there together.

A. Yes sir.

Q. What were they there together about? What did they say and do?

A. I do not know; the first time, I hired a horse to them.

(Objected to by Mr. Bradley, as having nothing to do with the conspiracy.

Mr. Pierrepont said they would connect it with the conspiracy.

Question allowed by the court, to be ruled out if not connected subsequently.)

A. The first time I saw Surratt there with Booth, Booth came, I think, and paid one or two weeks' livery. Then, three or four days after, he came down and I hired him a horse to go into the country.

Mr. BRADLEY. Hired to whom?

A. To Surratt. He came and hired a horse two or three times. The next time, Booth and Sam. Arnold came there together.

Mr. BRADLEY. I must object to that. Sam. Arnold is not named in the indictment.

The DISTRICT ATTORNEY. Your honor will remember that the count in the indictment refers to "divers persons to the jurors unknown."

The COURT. If you show that Arnold was connected with the conspiracy, the evidence will be proper.

Mr. BRADLEY. That is all we desire.

Mr. PIERREPONT. I understand that we shall show that.

A. The last time Surratt came there and hired a horse he came there about three or four o'clock in the afternoon.

Q. When was that?

A. That was the 25th of January, 1865.

Q. Previous to that time, when he had met Booth there, had he any conversation with him?

A. He always came with him, except on this occasion.

Q. On this occasion, who did he come with?

A. Nobody. He came alone.

Q. He hired a horse?

A. Yes, sir; and ordered me to have Booth's horse ready by seven o'clock that evening—this bay mare.

Q. What time was it that he got there?

A. About seven o'clock that evening. It was raining very hard. He came about three and ordered them.

Q. When he came at seven, what occurred?

A. He came there; I was standing in the gangway. It was raining very hard. I asked him if he was going to the country such a night as that. He said yes, he was going down to T B to a dance party. I told him it would have to be a fine dance party that would take me down there such a night as that. I asked him if he would go over to the Clarendon and get a drink. He said he thought he had had enough then. I thought so too.

Q. Did Booth come?

A. He had not come yet; I asked Surratt into the office to sit down.

Q. Did he come in?

A. Yes, sir; he came in and sat there some few minutes. He told me he was going down in the country to T B, to meet a party and help them across the river; that he and Booth had some bloody work to do; that they were going to kill Abe Lincoln, the d——d old scoundrel; that he had ruined Maryland and the country. He said that if nobody did it, he would do it himself, and pulled out a pistol and laid it on the desk.

Q. Was anything said on this occasion as to what he represented?
A. He said he represented two counties in Maryland.
Q. State whether the rain continued?
A. Yes, sir; very hard.
Q. Did Booth come?
A. He came about 8 o'clock.
Q. State whether there was any conversation afterward between Booth and Surratt?
A. Mr. Surratt chastised him for being so late—for keeping him waiting so long.
Q. Will you explain what you mean by the word "chastise"?
A. I think he was going to hit him in the face with a glove or something of that kind—in joke, of course. He either hit at him, or hit him, I do not know which.
Q. Jokingly?
A. Yes, sir.
Q. I simply wanted to know whether you used the word "chastise" in the ordinary meaning of it, or whether you meant to chide—find fault?
A. Yes, sir; to find fault.
Q. Were you in Washington on the day of assassination?
A. Yes, sir.
Q. Have you any distinct memory of what you did on that day?
A. Yes, sir.
Q. Will you state whether you were riding or walking?
A. I was doing both that day; I was pretty busy; I was driving a black horse that day to exercise him.
Q. At what time in the day?
A. I started out about two o'clock in the afternoon.
Q. Which way did you go?
A. I went down to the Navy Yard first, and then down to the congressional burying ground.
Q. When you came back, what street did you come?
A. I went around by the Bladensburg toll-gate, and came in H street.
Q. Did you come in late or early?
A. I got to the stable, I reckon, at four o'clock, or a little after four.
Q. Before you got to the stable, when you came down H street, did you meet anybody that attracted your attention?
A. I met a great many.
Q. Did you meet any one in particular that attracted your attention?
A. I met John H. Surratt.
Q. The prisoner at the bar?
A. Yes, sir.
Q. Did you know him very well?
A. I have known him a good long while—I think I ought to know him.
Q. Was anybody riding with you at the time?
A. Yes, sir.
Q. Is that person living?
A. Yes, sir.
Q. How was Surratt moving when you met him, on horseback or on foot?
A. He was on horseback.
Q. What kind of a horse was it?
A. I did not notice the horse much; I think it was a chestnut-sorrel, a rather darkish horse.
Q. Is chestnut-sorrel a dark color?
A. Yes, sir.

Q. State whether you spoke to him?

A. I spoke to him and said "How are you, John?" He nodded to me; I do not know whether he spoke or not; I was jogging along at a pretty good gait.

Q. He bowed to you, and you said, "How are you, John?"

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. How was he dressed?

A. He had on a kind of rusty colored coat; he had a muffler around his neck, something like a lady's victorine.

Q. What did he have on his head?

A. He had on something like a jockey cap crown.

Q. You say it was about four o'clock in the afternoon, and that you met him down Sixth street?

A. No, sir; on H street, between the Printing Office and the railroad, as near as I can judge.

Q. Were you examined before the military commission?

A. Yes, sir

Q. Did you state any single one of the facts you have stated here?

A. No, sir; I was not asked; I was only asked about Booth keeping horses in my place.

Q. You have seen your examination?

A. I have seen it since it was printed.

Q. You have not seen it lately, have you?

A. No, sir, I have not.

Q. You say you are a veterinary surgeon; did you use to train horses and break horses also?

A. Yes, sir, sometimes.

Q. When you were before the military commission were you asked about John H. Surratt?

A. No, sir; I do not think you will find a word in that book in my examination about him.

Q. Did not you, at that military commission, say that John H. Surratt was at your stable in the January previous, with Booth?

A. Yes, sir.

Q. Was not your attention called then to John H. Surratt?

A. Yes, sir; you asked me if I was asked about him.

Q. No; I asked you if you stated any single fact before that military commission that you stated to-day?

A. Then I misunderstood you. I thought it was whether they asked me any question about Surratt. They just called me to ask about Booth's horses.

Q. Then you did state that John H. Surratt came there?

A. Yes; I told them too about Arnold's buying a horse.

Q. Have you told to-day about Arnold buying a horse?

A. I have not been asked it.

Q. I ask you if you stated anything about John H. Surratt there that you have stated to-day?

A. No, sir, only in regard to hiring a horse.

Q. Were you not examined by an officer of the government before you were called to testify as a witness at the arsenal?

A. Colonel Burnett called me out into the witness room. I told Mr. Cottingham, the man that summoned me, that I would give him $5 to get me off; that I had some horses to ship at Georgetown. Mr. Cottingham went and fetched Colonel Burnett out. He asked what I knew. I was going on to state. He said he did not want to hear about that; that I could come the next day

I came, and told about Surratt's hiring a horse. They sent me to 17th street to identify the horse Booth kept with me.

Q. Did not you know that the great point of inquiry was, who was concerned in the murder of the President; and did not you know that John H. Surratt was charged as being one of the parties?

A. I did.

Q. Why did you not tell what you have told the jury here to-day?

A. I was not asked about it.

Q. You were asked what you knew about Booth and Surratt?

A. No, sir; I was not asked about Surratt. I told about Surratt's hiring the horse on my own motion.

Q. Why did you tell that?

A. I do not know; they asked me about horses and I told them about Surratt. They may probably have asked me if Surratt did not hire a horse from me. I do not know.

Q. You stated that you were not asked about Surratt at that time, but what you stated about him was of your own accord?

A. I might; I do not know whether I was or not.

Q. Why did not you tell at that time all you have told the jury to-day?

A. I was very glad to get off the stand and get away from the place.

Q. Yet you did tell them about Surratt being at your stable with Booth?

A. Yes, I told them. I do not think I was asked it.

Q. I ask you again whether you told them anything at all of what you have stated here to-day?

A. I did not tell them anything about the conversation with Surratt I have stated.

Q. Did you tell them you saw John H. Surratt in this city on the afternoon of the 14th, the day of the murder?

A. No, sir, I did not.

Q. Did not you know it was of importance to find out whether John H. Surratt was concerned in the murder or not?

A. Yes, sir.

Q. Then why did you not tell them what you knew?

A. I was well acquainted with Surratt and inclined to shield him.

Q. Yet you told them that he was with Booth at your stable; that he was there using Booth's horse; and you told them that without being asked?

A. I told them about hiring a horse to go down to the dance party.

Q. You told them about Booth's going, and about that little passage between Booth and Surratt?

A. No, sir.

Q. Did you tell them about Surratt being tight that night; that he had too much on board already?

A. No, sir; I was scarcely on the stand five minutes, or two minutes.

Q. In that two minutes or five minutes you told them these things without being asked?

A. I told them all they asked me.

Q. But they did not ask you about Surratt being there, and yet you told them?

A. I think they asked if anybody used Booth's horses besides himself, and that I told them he let Surratt use his horses; and I think they might have asked whether Surratt hired horses. I think it probable they did, but I do not know.

Q. Then you think it is possible that they might have asked you about Surratt?

A. I think so; I do not know.

Q. You think you did not volunteer to state it of your own accord?
A. I do not know whether I did or not, it is so long ago.
Q. Did not you tell us at first that you were not asked questions, but that you told all this without being asked?
A. I told you at first that I did not tell them anything about the conversation between Mrs. Surratt and myself.
Q. Did you ever take a horse from me to break?
A. Yes, sir.
Q. Did you sell that horse while in your custody?
A. Yes, sir.
Q. Did you ever pay me the money for it?
A. No, sir.
Q. You took him and sold him without my authority?
A. No, sir.
Q. You had my authority for it?
A. Yes, sir.
Q. You swear to that?
A. Yes, sir.
(Examination objected to by district attorney.)
Q. Are you the same Dr. Cleaver indicted, tried, and convicted in this term?
(Objected to by district attorney.)
The COURT. The question may be asked; it will be for the witness to say whether he will answer it.
Q. I ask whether you are the same Dr. Cleaver who was indicted, tried, and convicted for rape upon a poor little girl in this city, and whether you have not obtained an order for a new trial?
WITNESS. I cannot answer that question.
The COURT suggested that it would be better to bring in the record of his conviction if such is the fact.
Mr. BRADLEY said he had the right to ask the question, and the witness would answer or not, as he pleased.
The DISTRICT ATTORNEY denied his right to ask the question.
Q. Where have you been for the last month or two?
A. In the city.
Q. Where in the city?
A. I cannot tell you that.
Mr. BRADLEY. Will your honor inform the witness whether he is obliged to answer the question or not? He declines to answer it.
WITNESS. I stated that I had been in the city.
Q. Where in the city?
A. In different places.
Q. In what different places?
A. I have been in Philadelphia.
Q. Then you have not been in this city?
A. Yes, I have been in this city.
Q. Where have you been for the last three weeks?
A. I cannot answer that question.
Mr. BRADLEY. I hope the court will instruct the witness that he must answer the question.
The COURT. The question may be put, and if the witness does not choose to answer it he may decline to answer it.
Mr. BRADLEY. Can he decline to answer it unless he states that it would tend to criminate him?
The COURT. Criminate or degrade him.

After a statement made by the witness privately, the court stated he was satisfied the witness had a right to decline to answer the question.

Q. Have you recently seen a man by the name of Sanford Conover, otherwise known as Dunham?

A. Yes, sir.

Q. Have you been in daily intercourse with him?

A. Sometimes I have.

Q. In this city?

A. Yes, sir.

Q. Have you talked with him about this case?

A. Yes, sir; I told him all I knew about it two or three months ago.

Q. Did he write down what you told him?

A. No, sir; not that I know of—not in my presence. He is a man I very seldom spoke to.

Q Yet you were in daily intercourse with him, and told him all about this case?

A. I may have been in his company.

Q. How came you to tell him about this matter?

A. We were talking about Surratt's trial, and I got to telling him about Surratt's hiring a horse of me.

Q. Did you tell Sanford Conover the same things you have told in court to-day?

A. Pretty much the same.

By Mr. MERRICK:

Q. Where was it you saw Sanford Conover?

A. I decline to state where it was. I believe it was on 4th street somewhere.

Q. Was it on the corner of the street?

A. No, sir.

Q. Near the corner?

A. Yes, sir.

Q. Just round the corner from G street, on the left-hand side of Fourth street as you go up?

A. Yes, sir.

Q. Is that where you have been staying for the last two or three weeks?

Mr. PIERREPONT. I ask the court to instruct the witness as to his right to answer.

The COURT. I have done so.

By Mr. BRADLEY:

Q. I want to know whether Sanford Conover is the first man to whom you told the things you have stated in court to-day.

A. No, sir.

Q. Who else?

A. A young man who was keeping stable for me by the name of Charley Lewis. I told him of the conversation they had after they went down the country together.

Q. Did you tell Charley Lewis you saw Surratt in this city on the 14th of April, 1865?

A. I do not know whether I did or not.

Q. You do not know?

A. No; I saw a great many people in 1865 that I did not tell him about.

Q. Are there a great many people in the city of Washington that you know anything about, charged with complicity in this murder?

A. No, sir; not that I know of.

Q. You do not know where Charley Lewis is?

A. No, sir.
Q. How long is it since you have seen him?
A. About a year and a half.
Q. Where did he belong?
A. In Connecticut.
Q. Do you know where he went when he left here?
A. No, sir; he went away in a hurry from me.
Q. How long after this conspiracy trial did he go away?
A. Three or four months, or four or five months; I cannot state exactly the time.
Q I want to know the first person to whom you told that you saw John H. Surratt on the 14th of April.
A. I may have told a great many—I cannot recollect.
Q. Do you know whether you told it to anybody before you told it to Sanford Conover?
A. No, sir.
Q. Were you at large in the city when Surratt was arrested?
A. No, sir; I was in the city.
Q. Have you not been examined in a civil suit in this city since John H. Surratt was arrested?
A. No; it was a few days before.
Q. Before he was brought here?
A. Yes, sir.
Q. Are you quite sure about that?
A. I know it, sir.
Q. Up to that time, had you told anybody of this thing?
A. I might; I cannot say.
Q. Can you not tell when you first spoke of a fact so important to the life of a man as this?
A. I did not think it important at the time I met him.
Q. And you carried the secret for how long a time?
A. I did not think it a secret at the time I met him.
Q. I do not speak of the time you met him. During the conspiracy trials you knew it was an important fact to ascertain whether he was in the city on that day or not?
A. Yes, sir; and I should not have told it now if it had not been for Conover. He soon told somebody, and the first thing I knew, somebody came to the jail to see me. I got very mad at Conover. I told him I did not want to answer the question.
Q. Did you say it was in the jail?
A. Yes, sir.
Q. Who came to see you?
A. I think it was Mr. Ashley, a stoutish gentleman. I asked him, and he told me how he came to know of it. I would not answer the question until he told me who had told him of it. I knew I had not said it to anybody but Conover. When I went back I never spoke to him for six or seven days.
Q. Then you had a talk with Mr. Ashley?
A. Yes, sir.
Q. Did you tell him about all these things?
A. No, sir.
Q. What else did you fail to tell him?
A. I did not tell him a great many things; I never told him of the sale of Booth's horse to Arnold.
Q. Did Mr. Ashley write down what you said?
A. No, sir.

Q. Did he have paper when he came in?
A. Not that I know of; I never saw any.
Q. Was he in Sanford Conover's company?
A. No, sir.
Q. Did you not see him in Sanford Conover's company at other times?
A. I never saw him in his company in my life.

By Mr. PIERREPONT.

Q. You have been asked about the sale of a horse to Arnold. What was that?

Mr. MERRICK. We have not asked that.

Mr. PIERREPONT. It came out in some way in cross-examination.

The court ruled that the question might be asked.

A. Booth came down to the stable on the 27th or 28th of January and paid his livery; I think to the 26th. Then he came about the 27th or 28th and paid his livery up to February 1, and Sam. Arnold in company with him. He then told me, in Arnold's presence, that he had sold the horse to Arnold, and that Arnold was to pay the livery from that time on.

Q. Now, about Booth's order you spoke about, what did that mean?

(Question objected to as not relating to what was brought out on the examination in chief. Objection sustained.)

By Mr. BRADLEY:

Q. Who was the Mr. Ashley who called on you at the jail?
A. I don't know him only by that name. I believe he is a member of Congress. I never saw him before in my life.
Q. What sort of a looking man is he?
A. A stoutish man.
Q. Did you understand he was a member of Congress?
A. Yes, sir; he told me who he was.
Q. Have you received any offer of favor or reward for the testimony you have given in this case?
A. I have not, from anybody.
Q. You are quite sure of that?
A. Yes, sir; I have not, from anybody.

By the DISTRICT ATTORNEY:

Q. And we understand you to say you had no idea of revealing this?
A. I did not; I told it to Conover confidentially.

Mr. EDDY MARTIN sworn and examined.

By Mr. PIERREPONT:

Q. State your residence and occupation.
A. I reside in New York. I am a commercial broker.
Q. In the year 1865, did you go down to Port Tobacco from the city of Washington?
A. Yes, sir.
Q. Now state briefly what occurred there, and what you saw connected directly with the prisoner at the bar.
A. I went to Richmond, and I will state the circumstances under which I went, if you will permit me. In the fall of 1864 a gentleman went to Richmond and consulted with the confederate authorities there in regard to the disposition of the entire cotton crop of the south. On his return, in company with some persons, personal and political friends of Mr. Lincoln, he called to see Mr. Lincoln, and had a consultation with him in reference to it.

Q. Were you there?

A. No, sir; I have seen the affidavits of the parties.

Q. Then you need not go into anything in regard to that—growing out of that. You went down there?

A. Yes, sir; and it will take me but a moment to state the facts and circumstances under which I went. I think it is my right to do so. I think you promised it to me.

Mr. PIERREPONT. I have no objection, if it is legitimate.

Mr. BRADLEY. There is no objection on the part of the defence.

WITNESS. Mr. Lincoln expressed a desire to see this thing consummated. He suggested a certain course to be pursued, in which our government should not be directly connected with it. The confederate government wanted to treat directly with Mr. Lincoln. He objected to that; he said he would not recognize them and he would not treat with them, but that if these gentlemen, or any association of individuals, could enter into arrangements to purchase the cotton and tobacco in the south, he would guarantee them the protection of the government and afford them every facility for carrying out that arrangement. At the close of the interview these gentlemen asked for a pass to return south, and consummate the affair. Mr. Lincoln said he would rather not give a pass; but that they had been there once, and he guessed they could go again. In the month of December these parties came and laid the facts before me; asked me to take hold of the business, and prosecute it to its consummation. After consideration, I agreed to do so, believing I acted with the tacit consent of the President, if not his full approval.

Mr. PIERREPONT. And the reason you asked to make this statement was in order to show that you were there legitimately?

A. That is precisely the reason. By the time I got there——

Mr. PIERREPONT. That is sufficient to show your reason. Now please state what occurred.

WITNESS. I think I have a right to complete this explanation. Judge Pierrepont promised me I should.

The COURT. As it will probably take less time for the witness to complete his statement than to argue the question, I think he had better be allowed to go on.

WITNESS. I went to Richmond; but so long a time had elapsed after the original proposition, that they declined to carry it out as first proposed, but expressed a desire that I should purchase cotton freely, which I did to the extent of about $6,000,000, and obtained the refusal of about $15,000,000 worth more. I came back to Washington, and reported promptly what I had done. There was nothing criminal or irregular in it. It was done with the tacit consent of the President.

Q. And that was the reason of your going?

A. Yes, sir.

Q. Now go on and state what relates to this subject.

A. While in Port Tobacco, I remained for ten days, in order to get an opportunity to cross the river. I employed a man by the name of Andrew Atzerodt, and paid him to make some arrangements for me to cross the river.

Q. Was that his full name?

A. I do not know; he went by that name.

Q. Was his name George A.?

A. I presume so; he went by the name of Andrew.

Q. There was no doubt about the other name being Atzerodt?

A. I think not. I heard his name, and recollect asking him once if it was a Russian name. He tried to make arrangements for me to cross, and went down

the river several times. I paid him for his trouble, and finally abandoned the idea and left there. I did not cross there at all.

Q. What time was that?

A. About the 10th of January, 1865; from the 7th to the 15th.

Q. Who else did you see there connected with this conspiracy?

A. I saw Surratt there on one occasion.

Q. Tell what you know about it; what was said or done.

A. I had no particular conversation with him. I was introduced to him. He did not refer to his business, and I do not think I did to mine. On one evening after dark a man told me that a party was just about to cross over. I said I would like to be introduced to him. He said he would do so. In probably fifteen or twenty minutes he came in and said he was mistaken; that they were not going to cross. During the evening I was introduced to Surratt. No particular conversation passed between us. I may have told him I was going to cross the river. I think I did. I remained that night. The next day when he came in to supper he had on his leggins. I asked him if he was going. He said he was going back to Washington; that he was employed in Adams's express office; that he had three days' leave of absence; that his time was nearly expired, and that it was necessary for him to start back that night.

Q. State whether you saw he and Atzerodt speak together.

A. I am not positive whether I saw them speak at all with each other.

Q. Did you see them after that day?

A. I did not see him after this conversation at the supper table, and have not seen him since till I saw him here.

Q. Did you see Atzerodt afterwards?

A. Yes, sir. I remained two or three days and tried to get across. I saw him there all the time I was there.

Q. Did you see him on the other side?

A. Never.

Q. Did you see either of them on the other side?

A. I never saw or heard of either of them on the other side.

Q. Did you see either of them at any other place, at any other time, that you remember of?

A. I did not.

Q. You did not know Payne?

A. No, sir.

Q. Did you know Herold?

A. No, sir, I did not.

Q. You had other conversation with Atzerodt, did you?

A. I did the night Surratt left there. I was losing confidence in Atzerodt. I thought, although I had been paying him tolerably liberally, that he had been throwing off on me. I staid up pretty late that night. He came to the hotel about 11 o'clock. I accused him of intending to cross over that night with other parties; told him I had been paying him all that he asked, and that I must cross by the first boat. He denied that anybody was going to cross that night. I reiterated the charge I had made of duplicity upon his part. He then made this explanation: He said no one was going to cross that night, but on Wednesday night a large party would cross of ten or twelve persons; that he had been engaged that day in buying boats; that they were going to have relays of horses on the road between Port Tobacco and Washington. Said I, "What does this mean?" He said he could not tell. After a moment I said I supposed that confederate officers were to escape from prison, and that he had made arrangements to cross them over into Virginia. He said "Yes, and I am going to get well paid for it."

Q. When you asked him first what it was, he did not tell you?

A. No; he said he did not know, or something.
Q. But when you made this suggestion he agreed to it?
A. Yes; he assented to it in a moment.

BROOKS STABLER sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation from the first day of January until the first day of June, 1865?
A. I was in a livery stable; taking charge of a livery stable.
Q. Whose stable was it?
A. John C. Howard, on G street, between 6th and 7th.
Q. Do you remember the number?
A. I do not.
Q. Did you know John Wilkes Booth?
A. I did.
Q. Did you know John H. Surratt?
A. I did.
Q. Did you know George A. Atzerodt?
A. I did.
Q. Did you see them at your stable?
A. Frequently.
Q. Did you see them all together there?
A. I have seen them together, and separately.
Q. What did you see them doing?
A. They were talking, sometimes.
Q. Talking together?
A. Yes, sir.
Q. State when you first saw John Wilkes Booth at your stable, as near as you can remember.
A. I cannot remember exactly the time; it was about the time Surratt entered his horses at that stable in my care.
Q. When did Surratt put his horses at that stable in your care?
A. That, I think, is stated in my testimony on the other trial; I do not recollect it now.
Q. Can you state whether it was about February, 1865?
A. It was along about that period.
Q. In what manner did Surratt put his horses in your charge?
A. He left them there to be taken care of—to be fed and watered.
Q. How many were there?
A. Two.
Q. Will you describe these two horses?
A. They were both bay horses. One was an ordinary horse; the other was a rather fine horse—saddle horses.
Q. Were both horses, or one a mare?
A. Both horses.
Q. What was the direction he gave you about them?
A. His direction was that he wanted them taken care of in the best manner I could.
Q. In reference to their use, what did he direct?
A. That they were not to be used except by his order.
Q. Did he give you any order about their use?
A. He gave me an order on one occasion for Booth to use them?
Q. What did he say in giving that order?
A. His directions were that Booth and no one else was to have his horses, but that Booth could get them at any time.

Q. Booth could get either horse at any time; he did not mention any one?
A. I do not recollect that he did; Booth usually got one horse.
Q. Which one?
A. The better one.
Q. When these men came, did they come together or separately?
A. Sometimes two of them would come, and I believe all three of them have come together.
Q. How was it generally, did they all come together or separately?
A. There were generally two of them.
Q. How often in the course of a day were they there sometimes?
A. Two or three times a day sometimes.
Q. Did you see Atzerodt ride out with Surratt on any occasion?
A. I did on one occasion.
Q. Did you have any written order from Surratt.
A. I had one.
Q. Have you it with you?
A. I think I have; (paper produced.)
Q. Do you know who brought this note?
A. I did not know the gentleman
Q. It was brought by a gentleman was it?
A. I never saw him before or since.
Q. You know the handwriting?
A. It is Surratt's handwriting.
Mr. PIERREPONT read the note as follows:

"MARCH 26, 1865.

"Mr. BROOKS: As business will detain me for a few days in the country I thought I would send your team back. Mr. Bearer will deliver in safety and pay the hire on it. If Mr. Booth, my friend, should want my horses, let him have them, but no one else. If you should want any money on them, he will let you have it. I should have liked to have kept the team for several days, but it is too expensive, especially as I have women on the brain and may be away for a week or so.

"Yours, respectfully,

"J. HARRISON SURRATT."

Q. Will you state what team this alludes to?
A. The team I hired to him.
Q. What team was it?
A. A horse and buggy.
Q. This was on the 26th of March; how long prior to that did you let him have the team?
A. The day before, perhaps; I could tell by reference to my books.
Q. Did he tell you where he was going with it? and if so, where?
A. I think not; I do not think I knew where he was going then.
Q. Who did you see Surratt ride out with from your stable with any of the horses?
A. I have seen him ride out with Booth, and I have seen him ride out with Atzerodt.
Q. Did you receive any other note from John H. Surratt?
A. Not that I recollect of now.
Q. I allude to the one produced on a former trial?
A. I may have received several.
Q. Do you recollect Mrs. Surratt sending a note to you?
A. Sending an order for a horse and buggy.
Q. Who did you see ride out on that order sent by Mrs. Surratt?

Mr. MERRICK. We do not know that there is any such note.

Mr. PIERREPONT. I supposed the note was here; I believe it is attached to the record of the military commission. I will therefore waive that question until it is here.

Q. Please state whether in the spring of 1865, or in April, 1865, you had any conversation with Atzerodt about Surratt?

Mr. BRADLEY. As that conversation, I presume, is the same as that stated in the book containing the assassination trial, I will ask the court to examine it and determine whether it can properly be admitted in evidence or not.

Mr. PIERREPONT. I suppose the statement there is substantially what the witness will say.

Pending the decision of the question, the court took a recess until to-morrow at 10 a. m.

FRIDAY, *June* 21, 1867.

The Court met at 10 a. m.

Mr. Merrick presented to the court affidavits of the prisoner, asking that the witnesses Carroll T. Hobart, Charles H. Blinn, and Sergeant Joseph M. Dye be recalled.

After examining the affidavits, Judge Fisher said that he had carefully noted their contents, and had also considered the arguments submitted by counsel yesterday. His views were that the custom which had always prevailed was correct; that a witness should consider himself discharged after examination, unless told to remain. He thought it better to pursue the common practice.

Mr. MERRICK desired to know if the witness could be cross examined if brought here by the defence.

The COURT said that he could be examined as a witness for the defence.

Mr. MERRICK said he understood counsel on the other side to agree that if the witnesses were here they could be cross examined.

The COURT said that that was a subject for agreement between counsel.

Mr. MERRICK inquired if he understood the court right, that the bail bond of Dye could be offered in evidence.

The COURT said that that was a subject for future consideration. He had only remarked that that was the way to prove it.

EDWARD L. SMOOT, recalled. Examination resumed.

By the DISTRICT ATTORNEY:

Q. Will you state if you made any erroneous statement, or whether you made any mistake in your testimony of yesterday, which you desire to correct?

A. I have been told since I got off the stand yesterday that I was mistaken as to the gentleman who examined me up at Winder's building. I said yesterday, in reply to a question put by Mr. Merrick, that I was there examined by two gentlemen—one a young gentleman and the other an old one. He then asked me their names. I told him I did not know the name of either, but that I heard after I left the room that the elderly gentleman was Judge Holt. Some of the witnesses who went up there with me told me that the older gentleman of the two was Judge Holt. I never saw Judge Holt in my life to know him.

By Mr. MERRICK:

Q. Just describe the gentleman who examined you.

A. The gentleman was sitting down at the time, and did not get up at all. I was questioned first by the young gentleman. I saw him this morning, and he tells me his name is Colonel Barr. They both questioned me.

Q. Describe the old gentleman.

Mr. PIERREPONT. I submit to your honor whether that is a proper question.

The COURT. I will say that I supposed there would be some end to this matter of inquiring as to who has examined witnesses. It is altogether wrong. It is a needless waste of time; and I here take occasion to say, that if any government officer did not use due diligence, in an important trial, to find out what he could prove by witnesses, he would be very derelict in his duty. If I were a public officer prosecuting causes, I should feel it my duty, in every important case, to see and examine the witnesses; and a lawyer who does not do so, in my estimation—I may be wrong—does not do his duty to his client.

Mr. PIERREPONT said it was the duty of the government to prosecute crime, and find out who committed it. If a government could not protect its citizens, such government could not protect itself.

Mr. BRADLEY thought the government had abundant means in the judicial department, without bringing in extraneous aid from any other branch of the government, to seek out and to bring to punishment criminals. He thought it the duty of every citizen to communicate any facts; but he solemnly protested against any secret tribunal to investigate proof, and probably to create proof. He agreed that as to matters connected with the army Mr. Holt had authority; but he denied that Mr. Holt, or the War Department, had a right to investigate matters as to private citizens. There was a great difference between now and three years ago, when a great struggle was going on in the country. Under what law did Mr. Holt undertake to examine into a case pending in a civil tribunal? If there was such authority, he called for the statute. Judge Holt was a private citizen. The prosecution must show some authority for Mr. Holt's investigating matters.

Mr. MERRICK said it must be shown that the party examining was a duly authorized attorney of the United States.

The COURT said they could proceed with the examination of the witnesses; that it was proper to ask a witness who he had spoken to concerning the testimony he would give, with a view of showing that he had said on another occasion something different from what he had said on the present one. He only desired to intimate to counsel that a great deal of time was taken up in examining into matters of this sort, where there did not appear to be any point in the question.

Mr. BRADLEY stated that, whenever the court required it, they would always disclose the object of their question; but he would submit that, on cross-examination, it had the effect to cut the throat of the examination, to be called upon to make known the object of the question.

Examination resumed by Mr. MERRICK:

Q. Describe the elderly gentleman.

A. He was sitting down at the time he was examining me, and I couldn't tell whether he was a very tall man, or not. He was an old gentleman, however; his hair was gray. It was not white, but it was a silvery gray.

Q. Was it long?

A. Yes, sir, it was rather long, tolerably so. He had a little gray beard just on his jaw.

Q. Was there anything remarkable about his face that you observed?

A. I did not see him full in the face. I was sitting just between the two gentlemen. I saw his side face only.

Q. Did he have a heavy, large head?

A. I did not notice it particularly.

Q. Did you notice his nose?

A. Not particularly.

Q. In what room were you examined?

A. If I am not mistaken, while in the passage-way, looking round, I saw over the door the words, "Judge Advocate General's office."

The DISTRICT ATTORNEY. If your honor please, I think it proper for me to state that the Judge Advocate General is not examining witnesses in this case; not assisting us at all.

Mr. BRADLEY (to the court.) If so, let him state it under oath.

BROOKE STABLER. Examination resumed.

By Mr. PIERREPONT:

Q. Yesterday you produced this letter of March 26, 1865, from Mrs. Surratt. Tell us what that team was that came back with this letter?

A. It was a horse and buggy.

Q. Were there two horses?

A. There was one horse and buggy.

Mr. BRADLEY. I object. That was all brought out yesterday.

Mr. PIERREPONT. It was, and I am coming to that. I think he was mistaken about the team.

Q. Will you tell the color of the team?

A. That I cannot.

Q. Can you tell whether they were gray or white horses?

A. I do not recollect of his having a double team but once, and I do not think that was the time.

Q. What was the double team?

A. I cannot put them together now.

Q. Can you state what color the double team was?

A. I do not recollect.

Q. Can you tell whether you had a team of white horses, or gray, at that time?

A. I had one that was sometimes put double—rarely two grays together.

Q. Were you accustomed to speak of a single horse as a team?

A. O, yes; that was a common thing.

Q. Will you name the persons you saw at your stable conversing together with Surratt?

Mr. BRADLEY. I object. That all came out yesterday.

Mr. PIERREPONT. He may not have stated them all. Name the persons, if you please.

A. I have seen Booth, Atzerodt, and Herold.

Q. With whom?

A. With Surratt.

Q. Did you omit any name yesterday?

A. Yes, sir; Herold's name was omitted yesterday.

Q. Did you have any conversation with either of those men in relation to Surratt's trip anywhere; and if so, what was it?

A. I had with Atzerodt.

Q. State what it was.

A. He showed me the conclusion of a letter which he had received from Surratt, stating——

Mr. BRADLEY. Never mind that.

Mr. PIERREPONT. You can state what Atzerodt said. What did he say?

A. He told me that he had a letter in his hand from Surratt, but that he would not let me see it all. He opened it, and the concluding paragraph I read.

Q. What further did he say?

A. He said that in that letter——

Mr. BRADLEY. I thought you said that you read that part of the letter.

Mr. PIERREPONT. I am not asking him as to what he read, but as to what Atzerodt said to him regarding the contents of that letter. He has a right to tell us what Atzerodt said to him.

The COURT. Whatever Atzerodt said is testimony, whether he said it was in the letter or not. His saying so and so was in the letter would not put it there; nor his saying so and so was not there would not take it away if it was there. The object, as I understand it, is to get at the conversation.

Mr. PIERREPONT. Will you state what he said?

A. He told me that he would not show me the letter—the body of it—but that he would show me the latter part of it. He stated that the letter was dated in Richmond, and that he had understood that the detectives were after him, and he was making his way north as fast as he could. That is about the amount of what Atzerodt told me.

Q. Did he say anything further?

A. Nothing more than a reiteration of the same. He said it over two or three times. He positively refused to show me any more of the letter than that.

Q. Did he, at the time of this conversation, state where Surratt then was?

Mr. BRADLEY. If your honor pleases, I think it is time to interpose an objection to this line of examination. The witness has stated that Atzerodt showed to him a letter which he said was dated at Richmond, and which contained what the witness has repeated. To follow it up looks very much to me like a cross-examination.

Mr. PIERREPONT. I have a right, I suppose, to call his attention to specific matters, such, for instance, as to inquire whether he stated where Surratt was?

The COURT. You have a right to put such questions as will have the effect to refresh his memory, but not to put them in such a form as to render them leading.

Mr. PIERREPONT. I will then make the question more general.

Q. Will you state how the conversation between you and Atzerodt commenced?

A. He called me out on the edge of the pavement and told me what he had.

Q. Did you ask him anything?

A. Nothing more than to let me see the letter.

Q. And when he declined to do so, what did you say further, if anything?

A. I do not recollect saying anything particular.

Q. Was there anything said as to where Surratt was at the time of this conversation? If so, what was it?

A. There is nothing on my mind now that I can recall. I do not think there was any impression made on my mind that would lead me to say where he was. He did not say.

Q. Did he say anything that explained to you what he meant by making his way north—north from what point?

A. North from Richmond.

Q. Did he say anything more to you in relation to the difficulty that Surratt was in? and if so, what?

A. That is the only difficulty that he spoke of—about detectives.

Q. Did he name to you whose detectives they were—whether they were Colonel Baker's, or any other squad?

A. I do not recollect whether they were Colonel Baker's, or whose they were—government detectives.

Q. He did not name whose particular squad that you remember?

A. No, sir; I do not recollect that he did.

Q. You say government detectives—detectives of what government?

A. Government of the United States.

By Mr. BRADLEY:

Q. Do you mean Atzerodt said United States detectives, or was that your inference from what he said?

A. I mean that he told me that the detectives were after him.

Q. And you understood they were government detectives; but I do not understand you to say that he told you they were government detectives?

A. I do not recollect that he said government detectives, but that is what he meant.

By Mr. PIERREPONT:

Q. Preceding that, did you have any conversation in relation to the payment of any bill?

Mr. BRADLEY. Conversation with whom?

Mr. PIERREPONT. Why, with either of those parties? To the witness. I do not mean to ask you with regard to anyb ody else, except some one of those that you have mentioned?

A. I think I had a letter from Surratt, telling me, in his absence, to call upon Booth.

Mr. BRADLEY. Wait a moment. Where is that letter?

Mr. PIERREPONT. I have not yet asked the witness about the letter. I am going to, but I do not choose to interrogate him about it at this point.

Q. I ask you what conversation you had in March, at the stable, if any?

A. I do not know that I can particularize anything. There was frequent talk about our money matters. Surratt would frequently ask me if I wanted any money.

Q. I will call your attention to the time when Atzerodt took away a blind horse, if any such thing ever occurred. Do you remember of any such thing?

A. I do.

Q. About when was it that he took away the blind horse?

A. As to the time, I cannot tell you.

Q. Can you tell about the time?

A. No, sir, I cannot.

Q. Blind of one eye, I understand this horse was?

A. Yes, sir.

Q. What kind of a horse was it?

A. It was a saddle horse—a fine racking horse.

Q. Was there any other horse taken away at the same time?

A. There was a bay horse.

Q. What kind of a horse was that in size?

A. Lighter than the other.

Q. Why did Atzerodt take away those horses? Who claimed to own them? Who was the owner, in fact?

A. They were Surratt's horses—entered by him, at least.

Q. Who paid for their keep?

A. Booth.

Q. Were these two horses returned afterwards?

A. No, sir.

Q. I do not mean to keep, but for any purpose?

A. They were brought there by Atzerodt to sell.

Q. That is what I am asking about. Did they succeed in selling them?

A. They did not.

Q. Then what was done with them?

A. He took them away.

Q. Who took them away?

A. Atzerodt.

Q. When did you last see this one-eyed horse—this fine racker?

A. I saw him in the government stables on 19th street.

Q. When?

A. During the trial at the arsenal

Q. What is called the conspirators' trial?

A. Yes, sir. I went up there at the instance of the judge advocate, to see if he was there and to see if I could recognize him.

Q. Did you?

A. I did.

Q. Please state whether that is the written order of which you have spoken heretofore. (Handing witness a paper.)

A. (After examining the paper.) That is it.

Q. In whose handwriting is it?

A. John H. Surratt's.

Mr. BRADLEY. Did you ever see him write?

WITNESS. Yes, sir. More of these papers are on file now, I presume. I put them away. They are orders and directions of various kinds.

Mr. MERRICK. What is that paper marked?

Mr. WILSON. "Exhibit 27."

Mr. PIERREPONT. I will now read this note to the jury.

He then read as follows:

"Mr. Howard will please let the bearer, Mr. Atzerodt, have my horse whenever he wishes to ride; also my leggings and gloves; and oblige, yours, &c.

(Signed) "J. H. SURRATT,

"541 *H street, between Sixth and Seventh streets.*

"FEB. 22, 1865."

Q. Will you now state to the jury whether you acted on this order, and did let him have the horses under it?

A I did, until that order was rescinded.

Q. When these horses of Surratt's were taken from the stables who took them away?

A. Mr. Booth took them away.

Q. Who paid for them?

A. Booth.

Mr. PIERREPONT. It is possible that you have stated, when they were brought back to sell, who took them again. If so, I do not want it again.

A. I have.

Q. In reference to the men coming to your stable, to what part of the stable did they go?

A. They went down to the lower end of the stable.

Q. That was the back part?

A. Yes, sir.

Q. What did they do when they got down to the back part of the stable?

A. That I do not know. They would be conversing together. Frequently I noticed that.

Q. Will you state what the manner of the conversation was, so that these gentlemen can understand it? I mean as to whether it was in a loud or in a confidential, whispering tone.

A. They would generally be about 150 feet from me; from 100 to 150 feet. Sometimes I would see them when they would be down there; at other times I would not; I would be busy in the office.

Q. Could you hear anything they said?

A. No, sir.

Q. What was their manner of conversation?

A. It was not so that I could hear any voice at all.

Q. It was in a low tone, then?

A. Well, the usual tone, I suppose; I could not tell from the distance I was.

Q. You could not hear anything that was said?

A. No, sir. I could not hear anything of the conversation, of course. They would be further from me than the length of this room.

Q. Their appearance indicated conversation?

A. Yes, sir; indicated conversation, of course.

Cross-examination by Mr. BRADLEY:

Q. You say those horses were claimed by John H. Surratt when they were taken away by Booth. Was it under any claim of ownership? When they were taken by Booth who paid for their keep? Did he take them away, or claim that he had purchased them?

A. He took them away after I had received information from Surratt that he would take them away and pay for their keep.

Q. Was anything said about their having been sold?

A. Not that I recollect of now.

Q. You say Booth paid for them when he took them away. Had not Surratt before that paid for them from time to time?

A. He had paid previously, certainly.

Q. When you say that Atzerodt held that letter in his hands and stated that it was dated Richmond, do you recollect whether he did not tell you that Surratt had been to Richmond, and on his way back had had a difficulty, and that the detectives were after him?

A. I saw the date of the letter myself. He may have said that.

Mr. BRADLEY. Never mind about that; I want to know what Atzerodt said. I want to know whether Atzerodt did not tell you that Surratt had been to Richmond, and coming back had got into difficulty, and that the detectives were after him, and that he was making his way to the north?

A. The idea conveyed to my mind was that he had heard the detectives were after him, and that he was about to leave, or may be, had left Richmond.

Q. You were examined before the military commission about the middle of May?

A. Yes, sir.

Q. Your memory was fresher then than it is now?

A. On some points it was.

Q. Do you now recollect with any distinctness what time in April that conversation occurred?

A. I cannot tell you the time precisely. I cannot say whether it was in April or not. I only recollect the circumstances.

Q. You have stated before that in the early part of April Atzerodt told me so and so. Is that your recollection now, that it was the early part of April?

A. It must have been in the early part of April, or previous to that. I do not recollect dates very well.

By Mr. PIERREPONT. You stated to the counsel that you saw the date of the letter.

Mr. BRADLEY. That was not in answer to any question of mine; and, therefore, I do not think it proper that you should refer to it at all. I told the witness at the time that I did not want him to state anything about that, but only to state what Atzerodt said; and I will now ask the court to tell the jury that that is not evidence.

The COURT. Of course, gentlemen, that answer of the witness is not evidence. You will understand that.

Mr. PIERREPONT. I will not ask the witness the question I intended, but will put another.

Q. I simply want to ask you one question, and that is regarding your name. There seems to be some misunderstanding among us both in regard to it.

A. My name is Brooke Stabler.

Q. Do you go by the name of "Brook" or "Stabler" generally, when spoken of?
A. Familiarly they call me by my first name, "Brook."

By a JUROR:

Q. Is it not a very common thing for gentlemen who keep horses in your stable to walk to the end of your stable?
A. Many do.

JAMES W. PUMPHREY, livery-stable keeper—residence, Washington—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?
A. I reside at No. 252 C street.
Q. State your business, and your place of business.
A. I am keeper of a livery stable, 244 C street, between Four-and-a-half and Sixth.
Q. In this city?
A. Yes, sir.
Q. How long have you been doing business there?
A. I have been in business about eleven years.
Q. State if you knew John Wilkes Booth.
A. I did.
Q. State when, where, and under what circumstances you first formed his acquaintance.
A. John Wilkes Booth came to my stable one day for a saddle-horse. He asked for the proprietor; I stepped up and told him I was the man. He said he wanted a saddle-horse to ride for a few hours. I cannot tell the exact day that he came there. I did not know at the time it was Booth, but found out that it was after talking with him a short while. He said he wanted a saddle-horse to take a few hours' ride in the country. I told him I could let him have one. He said he did not wish any but a good one. I told him I had a very good saddle-horse, I thought. He then said: "I wish you would have him saddled." I ordered him saddled, and then said to him: "You are a stranger to me; and it is always customary with me when I hire a horse to a stranger to have him give me some security, or some satisfactory reference." At that time Mr. Surratt—I do not know whether he stood across the street, or came over——
Q. The prisoner?
A. Yes, sir. Surratt said he knew him; that it was Mr. Booth, and he would take good care of the horse. I cannot now tell whether the prisoner came over and said this to me, or stood on the opposite side of the street and hallooed across.
Q. How long have you known the prisoner?
A. A great many years.
Q State as near as you can all that Surratt said at that time.
A. I think he said he would see me paid for it; that he was going to take a ride with Mr. Booth.
Q. Go on.
A. That is about all. I went in and ordered the horse to be saddled and brought out. There were some gentlemen sitting in front of my stable at the time. Who they were I do not know.
Q. What kind of a horse was it?
A. A light sorrel. When I came out with the horse saddled, he was gone. I asked some of them out at the door where he went? They said they thought he went to the Pennsylvania House. The boy stood at the door with the horse

and I stood out there, watching for him. I saw him come out of the Pennsylvania House. He came out alone, and came over and started off on the horse alone.

Q. Where is this Pennsylvania House?

A. It is on the south side of C street, between Four-and-a-half and Sixth, opposite to the old Exchange Hotel.

Q. Will you state the next time you saw John Wilkes Booth?

A. I could not tell the date when he next came to my stable.

Q. When was it you had this interview—how long previous to the assassination of the President?

A. I really forget—may-be six weeks or two months before. May-be a little more and may-be a little less. I cannot tell the exact time.

Q. State the next time you saw the prisoner.

A. I do not remember of ever seeing Mr. Surratt after that. He never called at my stable after that time.

Q. State the next time you saw John Wilkes Booth.

A. That I could not do; but it was not a great while—may-be a week or ten days, or two weeks. He was in the habit of coming to my stable and hiring horses after the time to which I have alluded. He generally rode the same horse; always when he could get him.

Q. I will ask you if you saw him on the 14th of April, 1865?

A. Yes, sir. He called at my stable that morning.

Q. State what time it was you saw him.

A. Somewhere between 11 and 1 o'clock, as well as I can remember. I did not pay much attention to the time. He called for a saddle horse, stating that he wanted to take a ride that afternoon. He expressed a desire to have the same horse that he had been in the habit of riding. I told him he was engaged, and therefore he could not have him. He wanted to know if I could not put the person off to whom I had engaged him, and let the man have the horse that I was to give him. I told him I could not do that. He then wanted me to give him a good one. I told him that the horse I was going to give him was a very good saddle horse. I told him I thought so, and he would think so after he had ridden him. He says: "Well, don't give me any but a good one." I told him I wouldn't; that I would give give him a little mare; that she was small, but a very good one.

Q. What color was the mare?

A. She was a bay mare, about fourteen hands high. I put on her an English saddle, and a snaffle-bit bridle. I have never seen saddle, bridle, or Booth since.

Q. Did you ever see the prisoner afterwards?

A. I never saw Mr. Surratt from the first time he came there with him. If I did, I do not remember it. He never called at my place.

Cross-examination:

By Mr. Bradley:

Q. You say that you have been in business eleven years?

A. Yes, sir.

Q. Did you keep a stable at the corner of Sixth and C streets?

A. I did. I went there in 1856.

Q. Did you ever see Mr. Surratt there?

A. I have seen Mr. Surratt come with his father very often to that corner, and where I am at present.

Q. How large was he then?

A. He was very small. I went to keep the stable in 1856.

Q. At what time did you go where you are?

A. In 1858. Surratt was but a small boy when I first knew him.

The COURT. A small boy in 1858?

Mr. BRADLEY. Yes, sir. He is only 23 or 24 years old now.

Q. You say you took charge of the stable where you are now in 1858?

A. Yes, sir. October 5, 1858.

Q. Did you ever see Mr. David Reed about that stable?

A. He has been there; but he never stopped over five minutes. I do not think he was ever there more than half a dozen times in his life.

JOHN FLETCHER—residence in Washington—sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. At Tim Nailor's livery stable, upon E street, between Thirteen-and-a half and Fourteenth streets.

Q. Where did you reside on the 14th of April, 1865?

A. At Nailor's stable.

Q. At the same place?

A. Yes, sir.

Q. On the 14th of April, 1865, did you see Atzerodt and Herold?

A. Yes, sir.

Q. State where you saw them and what occurred.

A. I saw them at Nailor's stable, but not together.

Q. Who did you see first?

A. Atzerodt.

Q. Subsequently, did you see Herold?

A. In about an hour after.

Q. Will you state what Herold did?

A. He engaged a horse of me.

Q. What did he say?

A. He wanted to know what was the price.

Q. How long did he tell you to keep it, or did he tell you?

A. He told me to keep it for him until ten minutes past 4 o'clock.

Q. Did he come there at that hour, or about it?

A. Yes, sir.

Q. Then what did he say?

A. When he came in he asked me if I had the horse ready, and I told him I had. He asked me how much I charged, and I told him $5.

Q. Did he tell you what he wanted the horse for?

A. He told me he was going to ride with a lady.

Q. What did you say to that?

A. I said nothing to it.

Q. Did he inquire for any particular horse?

A. Yes, sir.

Q. What horse?

A. A light-colored roan horse in the stable, called Charley.

Q. Did he get that horse?

A. Yes, sir.

Q. Did you have any conversation with him about taking another horse?

A. Yes, sir.

Q. What did he say about that?

A. He did not like that horse so well. He wanted that light-colored roan horse.

Q. Did you finally give it to him?

A. Yes, sir.

Q. What else did he want?

A. He wanted an English saddle and bridle to the same horse.

Q. Did he ask to see them?
A. Yes, sir.
Q. Did you show them?
A. Yes, sir.
Q. What did he say when you showed them?
A. He did not say anything. I took him into the harness room.
Q. Did he say anything about the size of either?
A. No, sir.
Q. Did you show him a saddle?
A. Yes, sir.
Q. What did he say of that?
A. I showed him two different saddles, neither of which suited him, and he picked out one of his own choosing.
Q. Did he take that?
A. Yes, sir.
Q. Did he say anything about the stirrups of the saddle?
A. Yes, sir. I showed him a saddle on which were military stirrups, but he did not like that so well as the English saddle and stirrups.
Q. Which did he take?
A. He took the iron stirrups, and the English saddle.
Q. Did he want a particular bridle?
A. Yes, sir; and I took him into the office and showed him the bridles.
Q. What kind of bridle did he select?
A. A double-rein bridle, with two bits on.
Q. What did he ask you before he mounted?
A. He did not ask me anything.
Q. Did he at any time say anything to you about staying out?
A. I asked him how long he was going to stay out. He said he did not know. I then told him he could not keep the horse out any later than 8 o'clock—9 o'clock at the furthest.
Q. When 8 or 9 o'clock came, what happened?
A. Nothing happened at that time between him and myself.
Q. What did you do?
A. I did not do anything.
Q. Did the horse come back at that time?
A. No, sir.
Q. What then did you do? Did you go out to look for the horse?
A. Not at that time.
Q. Did you at any time?
A. Yes, sir.
Q. Did you see Atzerodt and Herold?
A. No, sir.

Mr. BRADLEY. I do not like to interpose, but I must say that this is a most leading examination.

Mr. PIERREPONT. I admit it is leading, but I cannot get the witness to narrate.

The COURT. Let us try and see if we cannot. It is always best to avoid leading questions.

Q. Can you tell when you saw these two men together?
A. I never saw the two of them together that day at all; I saw them separately.
Q. Did you see them separately at your stable?
A. Yes, sir.
Q. What did you do about 9 o'clock?
A. When it came to 9 o'clock I had suspicion about the man not returning

with the horse. Atzerodt came after his horse about 10 o'clock. I sent one of the boys down the stable to get the horse ready for him. He afterwards wanted to know if I would not go and take a drink with him. I told him that I had no objection. He and I then went down to the Union Hotel and had a glass of ale. He asked me if I would have any more. I thanked him, but told him I would not take any more. Returning back to the stable, he said to me, "If this thing happens to-night, you will hear of a present." When he had mounted his horse I remarked to him, "I would not like to ride that horse this time of night; he looks too scarish." Said he, "He is good on a retreat." He seemed to be very much excited. Having suspicion of him, because of his acquaintance, Herold, not returning with the horse at 9 o'clock, as I told him to do, I followed after him, and saw him alight in front of the Kirkwood House, hitch his horse outside, and then enter the hotel. I waited until he came out and mounted again. He went along the avenue a short way, and then turned into D street; went along D street to Tenth, which he turned up. That was the last I saw of him. I then returned back to the stable, and inquired at the office if the roan horse had come in. They told me that it had not.

By Assistant District Attorney WILSON:

Q. What time was it when Atzerodt turned up Tenth street?
A. I think it was ten minutes past 10 o'clock.
Q. Did you see him again?
A. No, sir.
Q. Did you see Herold again?
A. Yes, sir.
Q. Where?
A. On the corner of Fourteenth street and the avenue.
Q. State what he was doing.
A. He was coming down the avenue from Fifteenth street. He was not riding very fast. It seems he knew me. I went up to him and demanded the horse.
Q. About what time was that?
A. I think it must have been twelve minutes past 10 o'clock.
Q. How long after you had seen Atzerodt turning up Tenth street?
A. I cannot say how long. I walked just as fast a I could from Twelfth street to Fourteenth street. When I demanded the horse from Herold he paid no attention to me, but put spurs into the horse, and went up Fourteenth street as fast as the horse could go. I kept sight of him until he turned east of F street. I then returned to the stable, saddled and bridled a horse, and started after him. I knew that Atzerodt had to cross the Navy Yard bridge in order to get home, and that this Herold being a friend of his, would probably go in that direction; so I started in that direction. When I got east of the Capitol I met a gentleman, who said——

Mr. BRADLEY. Don't state what he said.

WITNESS. I continued on to the Navy Yard bridge, when I was halted by the guard. I described Herold——

Mr. BRADLEY. Never mind what was said.

WITNESS. In consequence of information I then received, I returned back to the stable.

Q. State what became of those horses, if you know.
A. I do not know indeed. We have never got ours since.
Q. Will you describe the one Herold had, and then the other?
A. The one that I hired Herold was a light-colored roan horse, black tail, black legs, and black mane.
Q. Large or small?
A. About fifteen hands high.

Q. What was his make; was he compactly built, or otherwise?
A. He was compactly built.
Q. What was his age?
A. About twelve or thirteen years.
Q. What was his gait?
A. Single-foot racker.
Q. As to his forehead, was there anything to mark it?
A. There were no marks at all about him.
Q. Is there any single fact to mark him that will give a more complete description than you have given?
A. No, sir; only that his back was sore from a lady's saddle being placed on him so often.
Q. Had ladies been accustomed to riding him?
A. Yes, sir.
Q. He was not, then, frightened at a lady's robe, or anything of that kind?
A. No, sir.
Q. Now describe the horse Atzerodt had.
A. He had a dark brown horse.
Q. What was his gait?
A. He was a pacing horse.
Q. Size?
A. Over fifteen hands high.
Q. Was his action quick or heavy?
A. Very heavy.
Q. What as to his rapidity; was he fast or slow?
A. Very slow.
Q. What marks had he on him?
A. He was blind in one eye; his right eye was blind.
Q. You have never seen him since?
A. Yes, sir; I saw him up at Major General Augur's headquarters, on the corner of Seventeenth and I streets.
Q. When?
A. I think it was upon the 17th of May, 1865; I was sent from the military commission up there.
Q. What became of this one-eyed horse?
A. I do not know. They had him in the stable there. I do not know what has become of him since.
Q. You did not receive him again?
A. No, sir; he did not belong to us.
Q. Whose horse was it?
A. Atzerodt brought him to the stable; I do not know who was the owner.
Q. Had you ever seen that one-eyed horse before?
A. No, sir.
Q. When did he bring him to the stable?
A. On the 3d of April, 1865.
Q. You are sure about the date?
A. Yes, sir.
Q. Atzerodt brought him himself?
A. Yes, sir; and another gentleman came there with him.
Q. Who was the other gentleman?
A. I do not know who he was.
Q. Can you describe the other gentleman who came with him?
A. Yes, sir, I can.
Q. Suppose you do.
A. He was a man of about five feet seven and a half, I think.

Q. Of what age do you think?
A. His age, I think, was from thirty to thirty-five years.
Q. Give us his complexion, and the color of his hair.
A. He had black hair, and wore a heavy black moustache.
Q. Was his face rough, or smooth?
A. Very smooth.
Q. Was his hair straight, or curly?
A. Curly—kind of; rather bushy.
Q. What was his size?
A. He was something about my own make.
Q. Did he seem like a strong man, or a weak one?
A. He seemed to be very healthy-looking.
Q. Thin, or stout?
A. Thin; about my own make.
Q. As tall as you?
A. Yes, sir; about the same height, I think.

JOHN J. TOFFEY—residence Hudson City, New Jersey—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where were you on the 14th of April, 1865?
A. I was then a lieutenant in the Veteran Reserve Corps. I commanded a company at Lincoln hospital, which was doing guard duty.
Q. What is your rank?
A. Second lieutenant 42d Co., 2d battalion, Veteran Reserve Corps.
Q. State the particulars of what you did in connection with the horse captured by one of your guard on the suburbs of the city on the night of the 14th of April, 1865.
A. On the night of the 14th, or the morning of the 15th of April, last—it might have been a little after one—as I was going to the Lincoln hospital, where I am on duty, I saw a dark bay horse, with saddle and bridle on, standing at Lincoln Branch barracks, about three-quarters of a mile east of the Capitol. The sweat was pouring off him, and had made a regular puddle on the ground. A sentinel at the hospital had stopped the horse. I put a guard round it, and kept it there until the cavalry picket was thrown out, when I reported the fact at the office of the picket, and was requested to take the horse down to the headquarters of the picket, at the Old Capitol prison. I there reported having the horse to Captain Lord, and he requested me to take it to General Augur's headquarters. Captain Lansing, of the 13th New York cavalry, and myself took it there, where the saddle was taken off, and the horse taken charge of.
Q. Did you ever see him again?
A. Yes, sir. I was ordered, at the trial of the conspirators, to go and see if I could recognize the horse at the stable.
Q. Who went with you?
A. I went alone, I think.
Q. Describe the horse.
A. He was a very large bay horse. He was blind of one eye, although I did not notice that until I got to General Augur's.
Q. Which eye?
A. Really, I do not remember.
Q. How about the saddle?
A. The saddle was a sort of citizen's saddle, with army stirrups—small wooden stirrups. The covering over the stirrups was off—of one, I know—I think of both.

Q. What time was it that you found him?
A. I cannot tell the exact time—between 12 and 1 o'clock, I think.
Q. Did you ride him?
A. I did.
Q. What was his gait?
A. He was very much excited. I could hardly hold him in while going to General Augur's office. He appeared a little lame when I was going down. He might not have been, however. He was excited, and quivering very much when I first got him from the guard.
Q. Did you see him caught?
A. No, sir.
Q. How far was it from Tenth street where he was taken?
A. It was about three-quarters of a mile east of the Capitol.

The court here took a recess for half an hour.

AFTERNOON SESSION.

HONORA FITZPATRICK sworn and examined.

By the DISTRICT ATTORNEY:

Q. Be kind enough to state to the jury whether you have not lived in this city some time, and whether it is not your native city.
A. It is; yes, sir.
Q. What is your father's first name.
A. James.
Q. Will you state to the jury if you knew John Wilkes Booth?
A. Yes, sir.
Q. How long did you know him?
A. I do not know how long I was acquainted with Mr. Booth.
Q. Do you remember when you first formed his acquaintance, and where he was?
A. I met him at Mrs. Surratt's.
Q. Where was Mrs. Surratt living at that time?
A. On H street, between Sixth and Seventh.
Q. Do you remember the number of the house?
A. 541.
Q. Do you remember what year it was you first saw him there?
A. I think it was in 1865.
Q. You do not recollect what month?
A. No, sir.
Q. How often did you see him at the house, to your recollection?
A. I met Mr. Booth there several times. I do not know how often I saw him.
Q. Were you boarding at Mrs. Surratt's then?
A. Yes, sir.
Q. How long had you been boarding there?
A. From the 6th of October, 1864, until the time I was arrested.
Q. When were you arrested?
A. I think it was some time in April.
Q. How long after the assassination?
A. The assassination was committed Friday, the 14th. I was arrested the Monday following.
Q. I ask you if you knew a man by the name of George Atzerodt?
A. I did not know him by that name.
Q. By what name did you know him?
A. I knew him by the name of "Port Tobacco."
Q. Where did you see him?

A. I met him at Mrs. Surratt's.
Q. About what time was it?
A. I do not remember; he called there one afternoon.
Q. Do you recollect what year it was, and what month?
A. No, sir; I do not remember.
Q How long before the assassination was it that you saw this man?
A. I do not remember.
Q Was it not the day or night previous?
A. No, sir; that was not the night.
Q. How often did you see this man at Mrs. Surratt's?
A. I do not remember how often I met him there.
Q. Did you see him there more than once?
A. Yes, sir. I think I have seen him there more than once.
Q. Do you remember his ever spending a night there?
A. I remember he staid there one night.
Q. Do you remember what night that was—how long before the assassination?
A. I do not remember, sir.
Q. Could you give any approximate idea of the time?
A. No, sir; I have no idea at all.
Q. Do you know how long you commenced boarding there before Atzerodt came?
A. No, sir.
Q Did you know a man by the name of Lewis Payne, whom you saw before the military commission?
A. I did not know him by that name. I knew him by the name of Mr. Wood.
Q. When and where did you first see him?
A. I met him at Mrs. Surratt's also.
Q. How often did you see him at Mrs. Surratt's?
A. I do not remember seeing him there but twice.
Q. With whom did he come, and in what company did he come?
A. He called there one evening by himself.
Q. How long was that before the assassination?
A. I think it was some time in March.
Q. Was that the first time you saw him?
A. Yes, sir.
Q. In what room did you first see him?
A. I met him in the parlor.
Q. With whom was he talking at that time?
A. He was not conversing with any one in particular.
Q. Who were in the room at that time?
A. Mrs. Surratt, her daughter Annie, Miss Holohan, and Mr. Weichman.
Q. When was the next time you saw him there?
A. I saw him in March, also.
Q. Did you never see him there afterwards?
A. No, sir.
Q. You did not see him the day you were arrested?
A. I recognized him at the office after I was taken there.
Q. You did not see him at the house?
A. He was at the house, but I did not recognize him.
Q When you got to the office you recognized him as a man whom you had seen at the house?
A. I saw Mr. Wood, sir.
Q. When you say Wood, do you mean Lewis Payne, whom you saw before the commission?

A. Yes, sir.

Q. You know the prisoner, John H. Surratt?

A. Yes, sir.

Q. Do you recollect when was the last time you saw him at his mother's in April?

A. The last time I saw Mr. Surratt was two weeks before the assassination.

Q. During these visits by Atzerodt and Payne to Booth, did you see John at the house? and if so, did you ever see or hear them conversing.

A. I have seen them, but never heard them conversing, together.

Q. Do you recollect in the month of March of going to Ford's theatre? and if so, state in whose company you went?

A. I went with Mr. Surratt, Mr. Wood, and Miss Dean.

Q. State in what part of the theatre you were seated—whether you occupied a box or seat in the orchestra.

A. We occupied a box, sir.

Q. When you say Mr. Surratt, you mean John H. Surratt, the prisoner?

A. Yes, sir.

Q. And when you say Mr. Wood you mean Lewis Payne?

A. Yes, sir.

Q. While your party was in the box, did you see J. Wilkes Booth? If so, state what he did.

A. Mr. Booth came there and spoke to Mr. Surratt. They both stepped outside the box, and stood there at the door.

Q. You mean spoke to the prisoner?

A. Yes, sir.

Q. State if any one else joined them while they were standing there.

A. Mr. Wood.

Q. Lewis Payne, you mean?

A. Yes, sir.

Q. How long were these three talking together?

A. They remained there a few minutes.

Q. Could you hear what they said?

A. No, sir; I was not paying attention; they were conversing together.

Q. State, if you please, where that box was—in what part of the theatre.

A. I think it was an upper box. I do not remember which side of the theatre it was on.

Q. In what part of the play was this conversation—in the middle or near the close?

A. It was near the last part.

Q. After they separated, which way did they go, and which way did your party go?

A. We returned to Mrs. Surratt's house.

Q. Which way did Booth go?

A. I don't know, sir.

Q. Which way did Wood or Payne go?

A. I don't know, sir. I returned to my room. I did not see him any more that night.

Q. Did Wood go back to Mrs. Surratt's that night?

A. He came up in the carriage with us. I do not know whether he remained there or not.

Q. Did you continue in the city, or did you go away? and if so where?

A. I went to Baltimore the next morning.

Q. How long did you remain in Baltimore?

A. I remained in Baltimore a week.

Q. Do you know where this man Wood or Payne was living at the time you boarded at Mrs. Surratt's?

A. No, sir.

Q. Do you know whether he called at the Herndon House in this city?
A. Yes, sir.
Q. Where is that?
A. I do not know what street it is on.
Q. I allude to the Herndon House corner of ninth and F; you know the house?
A. I know the house, but I do not know what street it is on.
Q. Do you recollect passing by that house some time in the month of March, shortly before the assassination of the President, in company with Mrs. Surratt and others?
A. I remember passing with Mrs. Surratt; I do not know what month it was.
Q. Who were in company with you and Mrs. Surratt at that time?
A. Mrs. Surratt, Mr. Weichman, and Miss Jenkins.
Q. When you got to the Herndon House, state what Mrs. Surratt did and what the rest of the party did?
A. Mrs. Surratt went in, the others of us walked up the street a little ways.
Q. Did you wait for her up there?
A. Yes, sir.
Q. How long did you wait for her?
A. Only a few minutes there.
Q. Where had you been coming from?
A. From St. Patrick's church, on F street.
Q. What day of the week was it?
A. I don't remember, sir.
Q. Did Mrs. Surratt tell you or any of the party, to your knowledge, while you were going in that direction, that she intended going into the house?
A. No, sir; I did not know she was going there until she stopped.
Q. Did you or any of the party ask her what she went there for?
A. No, sir.
Q. Did she state to you afterwards what she went in there for?
A. No, sir; I do not remember asking her.
Q. Did you ever hear it spoken of afterwards?
A. No, sir.
Q. Do you know how long she staid there?
A. She remained there a few minutes.
Q. After Mrs. Surratt had been in the house did she come up and join the party?
A. Yes, sir.
Q. Where did you then go?
A. We returned to Mrs. Surratt's house on H street.
Q. Where was John at that time?
A. I don't know.
Q. How long after that was it before you saw Wood or Payne at Mrs. Surratt's. Did you not see him the next day?
A. No, sir.
Q. How long was it before you did see him?
A. I do not remember how long after that.

By Mr. PIERREPONT:

Q. Do you remember John Surratt going to New York.
A. No, sir; I do not remember his going.
Q. Have you any memory of his going to New York during the year 1865 at any time?
A. No, sir.
Q. Do you remember hearing him say anything about it at any time?
A. No, sir.

GEORGE F. CHAPIN sworn and examined.

By Mr. PIERREPONT:

Q. State your residence and occupation.
A. I live in Stockbridge, Vermont, and I am a farmer.
Q. How long have you lived in that place?
A. Since a year ago last February.
Q. Have you at any time been in Burlington, Vermont?
A. I moved from there in February, 1866.
Q. In the month of April, 1865, where were you?
A. I was in Burlington most of the time—not all of the time.
Q. What day near the middle of April were you in Burlington?
A. I left Burlington on Friday evening. I have forgotten the day of the month. I was on my way to New Haven, Connecticut, with some recruits and stragglers for Grapevine Point. I left there on Friday evening; I have forgotten the day of the month.
Q. Can you fix the day with reference to the assassination?
A. It was previous to it, that is, it was previous to when I had heard of it. I heard of it when on my way down, at Springfield, Massachusetts.
Q. When did you go back?
A. I went back on what they called the 3.15 train from New Haven, Monday. I think the train left New Haven at 3.15.
Q. State whether this was before or after the assassination.
A. This was after the assassination.
Q. State whether it was the Monday immediately following the assassination, or otherwise.
A. It was the next Monday after the assassination.
Q. You know, do you not, on what day of the week the assassination was?
A. It was on Friday of the previous week.
Q. When you got back to Burlington did you see a witness who has been on the stand, Charles Blinn?
A. Not immediately. I did not go to Burlington that day.
Q. When did you see Charles Blinn, after your return from New Haven?
A. I should judge it was on Wednesday evening. I think that was the first time.
Q. Where did you see him?
A. At the Central depot in Burlington.
Q. Will you state whether you there received anything from him that afternoon?
A. If I may be allowed, I will explain why I saw him on that occasion. I was not in the habit of speaking to him usually; but on my way from Essex Junction——
Mr. BRADLEY. You must not state your conversations with Blinn.
Q. Did you see him?
A. I did.
Q. Now tell us what occurred?
A. He showed me an article; I looked at it, and told him I would like to have it.
Q. What was the article?
A. A pocket handkerchief.
Q. How was it marked?
A. It was marked "John H. Surratt;" I think, "No. 2."
Q. Have you it before you now?
A. I should not recognize it, from the way it looked then, because then it was very dirty. I think it is the same handkerchief. It looks like it.
Q. Have you seen Mr. Blinn here?

A. I have not. He left before I arrived.

Q. What mark is there on the handkerchief you have before you?

A. It is marked "John H. Surratt, 2."

Cross-examined by Mr. BRADLEY:

Q. To whom did you give that handkerchief?

A. I gave it to George A. Gurnett.

Q. Who is he?

A. Gurnett, he called himself to me. He called himself one of Baker's detectives. He came to Burlington.

Q. And you think that was on Wednesday?

A. I gave it to him the next week; Tuesday, I think it was.

Q. Where did you see him?

A. In Burlington.

Q. Were you a detective?

A. I was.

Q. In Baker's employ?

A. No, sir; I do not know whether I was properly a detective. My appointment came from Captain Gleason, provost marshal of the 3d district of Vermont.

Q. Did you report at all to Major Grout, commanding at St. Albans?

A. I did not; I had nothing to do with him.

Q. Do you know where Gurnett is now?

A. I do not; I have never seen him since that day.

Q. You left Burlington to go to New Haven on Friday evening?

A. Yes, sir, by the 8 o'clock train.

Q. And at Springfield you heard of the assassination; what time did the train arrive at Springfield?

A. About 7 o'clock; sometimes later.

Q. What time that morning?

A. I could not tell you the exact time. I had to wait there one train before I went on to New Haven with my recruits. If we met the other train from Boston we could go right on without stopping five minutes; but if not, we had to stop over until 2 o'clock. I arrived there in the early part of the afternoon.

Q. When was it that you received that handkerchief from Blinn?

A. I did not receive it direct from Blinn until the day I gave it to George Gurnett, on Tuesday, the 25th of April. I had previously seen the handkerchief.

Q. When did you first see it?

A. On the Wednesday evening previous.

Q. What enables you to fix that date?

A. On Tuesday morning when I returned from New Haven I went directly home. I lived two miles out of Burlington. Then about the middle of the day, Tuesday, I drove over with my team and reported to the office and returned immediately back. My wife was very sick. I staid there until Wednesday. On Wednesday I went down to Essex Junction and left my team, and went down in the Wednesday evening train.

Q. And you think it was on that Wednesday you first saw the handkerchief?

A. Yes, sir.

Q. Did you leave Burlington then, or remain there?

A. I was at Burlington every day, more or less.

Q. Between the first time you saw the handkerchief and the time you gave it to Gurnett, how many times were you at Burlington?

A. I think I did not leave there again until Friday, when, I think, I was at home. On Saturday I returned to Burlington, and left again on Sunday. I could not say I did not leave Burlington. I went home Thursday and staid at home Thursday night, if I remember right.

Q. Now, sir, was it not on Saturday morning that you first heard of and saw that handkerchief?

A. I think it was not.

Q. Is there anything in your memory which will enable you to fix whether it was Wednesday or Saturday morning, or some time during the day on Saturday?

A. I could not have seen him during the day on Saturday, or any other day, because he was away from Burlington during the day.

Q. He was not there on Saturday afternoon?

A. He came in Saturday evening to the depot.

Q. Before sunset?

A. I don't know what time in the evening. He came in the evening and left early the next morning.

Q. What fact is there to fix it in your mind that you saw that handkerchief on Wednesday evening instead of Saturday evening?

A. I do not know that there is anything that I could tell to you. I was boarding at the hotel. Mr. Blinn said he would take it home for his mother to wash it. I called for it once after that, and he said his mother had been away; that his brother had died; that she had not washed it, but would do so.

Q. Can you fix the day when he said his brother died?

A. I cannot; and I cannot tell you whether it was Friday evening or Saturday evening that he made this excuse.

Q. Did not he tell you that his brother had died and his mother was absent attending him on Thursday evening; and did he not tell you this on Saturday?

A. He did not tell me the particulars at all.

Q. Did you see any more than one handkerchief?

A. I think I did not.

Q. Did he not show you two handkerchiefs, one marked "John H. Surratt, 2," and one not marked, and both very dirty?

A. If he did, I took very little notice of it. It was nothing I paid particular attention to.

Q. Did you not tell Gurnett there were two handkerchiefs?

A. I do not think I did.

Q. Did you not tell Gurnett that you got a handkerchief on Saturday evening, marked John H. Surratt?

A. O, no, sir; because I did not get it there.

Q. Did not you tell him that you first saw it on Saturday afternoon?

A. No, sir; I did not tell him any such thing. I could not have told him that, for I could not have seen him at any time during the middle of the day.

Q. I did not say any particular time; I mean in the afternoon of Saturday?

A. I do not think I told him anything of the kind.

Q. Did you tell him when you first saw it?

A. I probably did. I could not say.

Q. You do not recollect telling him that Blinn showed it to you on Saturday afternoon, and that there were two handkerchiefs together, both very dirty, one marked and one not marked?

A. I have no recollection of anything of the kind.

Q. Do you mean to say you did not tell him?

A. I do not mean to say I did not tell him, for I cannot remember everything I said two years ago.

Q. Did you make any statement to anybody else except Gurnett at the time in regard to that handkerchief?

A. No, I think not; I do not think I ever made a statement in regard to it from that time until last Saturday night.

Q. Did you make any report of it as a detective?

A. I presume I might at the office have reported it verbally to Captain Gleason, at the provost marshal's office; I do not know.

Q. Where is Captain Gleason now?

A. At Richmond, Vermont, I presume; I have not seen him lately.

Q. What is his first name?

A. Rolla, I think; I do not know that he has a middle name.

Q. You remember seeing Captain Gleason at that time?

A. I saw him usually every day. I was in his office when not on duty elsewhere.

Q. You have no recollection of reporting this fact to him particularly?

A. I do not think I did. He may have heard of it before I did.

Q. Did not you report the fact to him that you had given it to one of Colonel Baker's detectives?

A. No, sir; I do not think I did; the detective came there after me. Captain Gleason showed him where I was, and he and I went away together.

Q. You and the detective?

A. Yes, sir.

Q. Which way did you go?

A. We went to Winooski Falls, two miles nearly. It is in Burlington, near the village.

Q. Did you go there in reference to this handkerchief?

A. Yes, sir.

Q. Did you go there in pursuit of any particular person?

A. I went in pursuit of Charles Blinn.

Q. When you found Charles Blinn did Gurnett take down his statement in writing?

A. I do not think he did; I am not sure. He may have done it. I did not see him do it at that time.

Q. And you think that was the 25th of April?

A. I think that was Tuesday, the 25th of April. Why I feel so confident is from minutes I took at the time from day to day of what I was doing.

Q. Please turn to the 25th of April and see if you have a minute that you received the handkerchief on that day?

A. I do not think I have a minute of that kind. It is merely a minute of being with Gurnett, and reads as follows:

"TUESDAY, *25th of April.*

George A. Gurnett, Baker's detective from Washington. Went to Plattsburg on boat Canada. Came back on United States."

Q. Now turn to the 23d and see what entry you have there, if anything in reference to this matter.

A. Nothing in reference to this matter.

By Mr. MERRICK:

Q. You say you went from Burlington to Plattsburg on the boat Canada, and came back on the United States; are there two boats?

A. Certainly, there were more than two boats at that time. One started from Rouse's Point, going south, and the other from White Hall, going north. Each boat from the north and south touched at Plattsburg. We went down on one and came up on the other. These were the two night-line boats, so called at that time.

Q. The Canada left White Hall on the night of the 25th, and the United States left Rouse's Point the night of the 25th?

A. Yes, sir, at the same time; or the boat at Rouse's Point may possibly have left later, because they went further north than half way.

Q. Did these boats run both on the nights of Saturday and Sunday?

A. I should judge the boat starting south and that going north on Saturday night would arrive on Sunday morning and lie over till Monday night.

Q. I understand the only circumstance that enables you to fix these dates is that you called on Blinn for this handkerchief, and that he told you his mother had not washed it?

A. Yes, and the reason was on account of the sickness of his brother.

Q. You heard of the assassination on Saturday morning at Springfield, Massachusetts. When did you first hear the names of any persons charged with complicity in that assassination?

A. That I could not tell you. I could not fix any particular time.

Q. Did not you hear the name of Booth connected with the assassination at the same time you heard of the assassination?

A. Very likely I did. I could not tell you positively in regard to that. I did not hear it, I think, at that moment. I was just stepping off the train when the conductor said "Chapin, our President is murdered." Said I, No, you are fooling." He said, "No, it is so," and then turned and went off about his business. That was the first I heard of it.

Q. Do you recollect when you first heard of John H. Surratt as being connected with the assassination?

A. I have no recollection of hearing in regard to that any particular time. I probably heard it before I came back from New Haven, and I may have heard it at New Haven. There was great excitement in New Haven at that time.

Q. You heard it before Blinn told you he had the handkerchief, didn't you?

A. I probably did. I presume I must have heard it.

Q. And that was the reason you wanted to have that handkerchief?

A. There could be no other reason.

Q. And you think that was on Wednesday evening, when you came down on the afternoon train? Did you not also come down on the afternoon train on Saturday?

A. No. I was in Burlington on Saturday, and left with my own team on Sunday?

Q. You were then a detective?

A. I was appointed as a special. As I understand the law, it allows two deputy provost marshals in the district. Captain Gleason had his complement of provost marshals, and he gave me an appointment as special. I was in the office most of the time when I was not away on business. I was sent to New Haven with recruits and deserters, and went wherever I was ordered.

By Mr. PIERREPONT:

Q. Please turn to Wednesday and state what date it was.

A. The 19th of April.

By Mr. MERRICK:

Q. Did you go any further in pursuit of any matters connected with that handkerchief than simply to go and see Blinn?

A. I did nothing further, only to deliver it to Gurnett.

BENJAMIN W. VANDERPOEL, sworn and examined.

By Mr. PIERREPONT:

Q. State your age and residence.

A. I am in my 29th year. I live in the city of New York; was born and raised there.

Q. What was your father's name?

A. Jacob Vanderpoel.

Q. Will you state where you were in the commencement of the war?

A. I was an attorney and counsellor at law in the city of New York.

Q. Who were you with?

A. Brown, Hall & Vanderpoel.
Q. You were a connection of the Vanderpoel of that firm?
A. Yes, sir.
Q. What is your occupation in New York now?
A. An attorney at law with Chauncey Schaffer, 213 Broadway.
Q. Where did you go in the commencement of the war?
A. Into the army, in the 59th New York volunteers.
Q. What position did you hold in the army?
A. I was first lieutenant of company G in that regiment.
Q. Were you captured by the enemy?
A. I was captured at Ream's station, Virginia, on the 24th of August, 1864.
Q. Where were you taken after you were captured?
A. I was taken first to Richmond, from there to Salisbury, North Carolina, then to Danville, and from Danville back to Richmond again, when I was paroled in the latter part of February, 1865.
Q. Before you went to the war did you know J. Wilkes Booth?
A. Yes, sir.
Q. How happened you to know him?
A. He used to visit a club that I belonged to in the city of New York, next to Laura Keen's theatre.
Q. What was the club?
A. The Lone Star Club.
Q. Do you remember the day of the assassination?
A. Very well, sir.
Q. Where were you?
A. I was in the city of Washington.
Q. How many days before the assassination were you here?
A. Three days before.
Q. How many days after?
A. About two or three days after.
Q. Did you see John Wilkes Booth on the 14th of April?
A. I did.
Q. Did you speak with him?
A. Yes, sir.
Q. Did he know you well, and you him?
A. Yes, sir—that is, he called me major; that is the title he generally addressed me by.
Q. Did you see him more than once on that day?
A. I saw him at least three times.
Q. Where did you first see him?
A. It was just above Willards' on the sidewalk.
Q. Where did you next see him?
A. The next place I saw him was between 11th and 12th, or between 10th and 11th, on the left-hand side of Pennsylvania avenue, going from here to the White House.
Q. State whether you saw this prisoner on that day?
(The prisoner made to stand up.)
A. I did see him at this place I speak of on the avenue.
Q. Who did you see him with?
A. With Wilkes Booth, and two or three others in the party.
Q. Tell the jury what they were doing.
A. They were sitting around a round table, with glasses on it. This is all I recollect now.
Q. Tell the jury the circumstances of your seeing him that day and what they were doing.
A. I had been up to the paymaster's department on some business relating

to my accounts. In coming out, I came down the avenue on the opposite side from the place I have described, and hearing music, I went across to see what was going on at this place. As I went up stairs I think there was a woman dancing a sort of ballet dance. There was a stage or something of the kind in the back part of the room.

Q. How was the room as to there being people in it?

A. I should say there were 50 or 60 people there.

Q. Describe the table where Booth and Surratt sat.

A. It was a round table, as near as I can remember, probably four or five feet across.

Q. What were they doing?

A. Apparently, talking.

Q. At what time in the day was it?

A. It was in the afternoon.

Q. Was the room light?

A. Yes, sir.

Q. Did you see them plainly?

A. O, very plainly.

Q. Were you near them?

A. I was about as far from them as I am from you at the present time, (twelve or fifteen feet.)

Q. Did you see them clearly?

A. Yes, sir.

Q. Could there be any mistake?

A. There is no mistake that I can see.

Cross-examined:

By Mr. Bradley:

Q. Did you speak to them in this place?

A. No, sir, I did not. They were in conversation with themselves.

Q. Booth did not address you as major at that time?

A. Not at that time.

Q. What time in the day did you make out it was?

A. It is hard for me to say exactly the time. I went to the paymaster's department about 1 o'clock, and was there half an hour or an hour—I don't know how long. I transacted my business and came down the avenue and went into this place.

Q. It was not dinner time?

A. I hardly know what you call dinner time. I had not had any dinner.

Q. Did you notice whether these gentlemen had anything to drink there or not?

A. I did not; I merely, as I came into the place, glanced at the table where they were sitting and talking the same as anybody else would do while sitting down there.

Q. Did you take anything to drink while there?

A. I don't recollect that.

Q. Did you ever see Surratt before?

A. I cannot say that I did.

Q. Did you ever see him since?

A. Not until this morning.

Q. You have examined him very carefully this morning?

A. I noticed one alteration. The goatee he has on now he did not have on then.

Q. You have examined him carefully, and you have no sort of doubt he was the man?

A. I have no sort of doubt he was the man I saw in that place.

Q. You saw him for how long a time?

A. It may have been five or it may have been ten minutes.

Q. Then you stood five or ten minutes looking at the group of people around that table?

A. I did not say that.

Q. Then you did not stand there looking particularly at them?

A. Not more particularly than at any others that I know of. I noticed a man I knew and some people in his company.

Q. Then you just glanced around on the party and saw Wilkes Booth and three strangers with him?

A. I looked, not expecting to find him, and said to myself "Halloo, he's got up here," and looked at him and saw two or three in his company.

Q. And you have daguerreotyped that look in your mind's eye?

A. I have.

Q. Two or more together?

A. Two or more together.

Q. And you therefore undertake to swear positively to the man you had that glimpse of?

A. I undertake to swear to what I believe.

Q. You are as certain as that you see me?

A. As certain as that I see you.

Q. Just as confident that you see the man you had that glimpse of two years ago as that you are looking at me now?

A. Just as confident.

Q. Who else was at the table?

A. Two or three others besides Booth and this man.

Q. Can you describe them?

A. I know one man was a thick-set, dark-complectioned man; looked as if he was a Frenchman. He had a foreign appearance about him—that was all I noticed.

Q. You think you would recollect that man if you saw him?

A. I think I could.

Q. The other two you did not notice so particularly?

A. You will understand that with men sitting around a table I certainly could not get a full view of every one unless I walked right round the table. I had a full view of Booth and this man, who were sitting alongside of each other, and that is the way I recognized him so particularly.

Q. This was between 1 and 2 o'clock?

A. It was some time in the afternoon; it may have been after 3 o'clock.

Q. Can you describe how this gentleman was dressed at the time?

A. I cannot describe his dress. I am a very poor observer about dress; I generally observe a person's features, but not his clothes.

Q. Can you tell whether he was dressed in light or black clothes?

A. That I cannot tell.

Q. Did they have their hats on or not?

A. Some did and some did not.

Q. Do you remember about his hair, whether it was short or long?

A. That I do not recollect. I think his hair was very nearly as it is now, perhaps a little longer.

Q. You remember he had no goatee?

A. I think not; it was very light if he had any.

Q. I want to know whether that man had a goatee at that time or not?

A. I do not think he had.

Q. You think he had a moustache?

A. Yes.

Q. You did not hear them conversing at all?

A. Not close; with fifty or sixty persons in the room, all talking, and the music, it would be impossible for me to hear conversation.

Q. Did you hear their voices at all?

A. No; I could not even say that, with all the noises going on.

Q. Then you went into a room, saw fifty or sixty persons sitting around tables and a woman dancing at the lower end of the hall. You recollect certainly about that?

A. I recollect about that; it was a novelty to me. It was the first time I had ever been in the place.

Q. You remember there was a woman dancing?

A. It was a woman or something.

Q. It was dressed like a woman?

A. It was dressed like a woman.

Q. You are quite distinct about that?

A. That is what I swear to.

Q. You are quite distinct that on Friday, the day of the assassination, you went in there and saw a woman dancing at the lower end of the hall; you are very clear about that.

A. Yes, sir.

Q. And you think it was between Tenth and Eleventh or Eleventh and Twelfth streets.

A. It was along there; I have not been there since to see.

Q. You do not know what the place was? Was it the Metropolitan Hall?

A. Metropolitan Hall or Washington Hall, or something of that sort, I could not swear positively to the name.

Q. Who did you tell of it?

A. I do not recollect that I told anybody of it.

Q. Did not you know that there was a hot pursuit after Surratt, and an inquiry whether he was with Booth or concerned with Booth on that day?

A. Certainly I do.

Q. And you did not tell anybody that you saw him and Booth together that afternoon?

A. I did not, and for this reason: After this affair, a number of my fellow officers who had been present with me in the city, came to me and said, "Vanderpoel, I would not be in your shoes for anything in the world; you will lose your commission." Said I, "What for?" They said; "Because you were along with Booth." I packed up my traps and started for the army. The detectives arrested me just as I was getting on the boat, and took me up to Tenth street; finally I got round to General Augur's office and explained matters as well as I could, and went back to the army.

Q. Had you not leave of absence?

A. Yes, sir.

Q. Was it not of the utmost importance, if you had seen Booth and been with him that day, that you should have made it known?

A. I can see now that it was; but I have explained what my motives were then. When officers jeered at me and told me they would not be in my shoes for anything, I wanted to get away, and that was the reason for what I did.

Q. Did you not know that if you had been in Washington only two or three days, on leave of absence and on legitimate business, you were safe here?

A. Certainly.

Q. And yet with this knowledge that there was a hot pursuit after Booth and all persons concerned in this horrible crime, you locked this information in your own breast and waited until now to disclose it.

A. Self-preservation is the first law of nature. I wanted to take care of myself first.

Q. Let me ask you whether self-preservation would not have been best consulted by giving all the assistance you could in the arrest of Booth?

A. I do not know.

Q. Did it occur to you that the fact of your departure, after having been seen with Booth, might render you in much greater danger?

(Question objected to by district attorney as calling for opinions of witness, and not facts.

The COURT. The witness may answer the question; it is not evidence though.)

A. I think, in the view you put it, it would have been better for me to come out with what I knew. We can all see these things afterwards, on second thought. Probably I did wrong in not coming out and telling what I knew.

Q. When did you come out?

A. Now, here, to-day.

Q. When before to-day?

A. I have never said very much about it.

Q. How was it known that you knew anything about it?

A. I saw the trial of John H. Surratt in the paper, and came on myself. I saw that the trial was progressing, and read an editorial in the New York Herald about it, and came on.

Q. When you came on what did you do?

A. I reported myself to Mr. Carrington.

Q. Without a summons?

A. Without a summons.

Q. Now I understand that you had never seen John H. Surratt before, nor since, so far as you can recollect?

A. I said I saw him that particular day; I did not say whether I had seen him before or since.

Q. How could you know it was John H. Surratt you saw there, and come and tell the district attorney you saw him there?

A. I could not; I came on here to see if one of the men I saw was John H. Surratt. When I came into court I was convinced it was, and that is all I know about it.

Q. And that is the whole matter?

A. That is the whole matter.

By Mr. PIERREPONT:

Q. I want to know if there is a difference in people in their capacity of remembering faces?

(Question objected to as immaterial, unless the witness is an expert.)

Mr. PIERREPONT. I am going to ask whether he is an expert in remembering human faces or not.

The COURT. You can ask him what his capacity is for remembering faces.

Mr. PIERREPONT. I will ask that question.

A. I have very seldom seen any one who would remember faces so well as I do. I have met people I have not seen in ten years and gone up to them and called them by name.

Q. You may state whether you have had it tested?

A. Yes, sir, I have.

By Mr. BRADLEY:

Q. You have recognized persons you have not seen for ten years; did you ever recognize a man you only had a glimpse of once after an absence of three or four years?

A. Yes, sir; I have done that. I have recognized people I have only been in company with once, fifteen, twenty, or twenty-five minutes.

Q. There you have had your attention drawn to them by conversing with

them and seeing their manner. Can you recollect any instance in which you have been able to recollect a man you have seen casually sitting at a table, just to glance at him, and not see them for two years afterwards?

A. Yes, sir; I have known occasions of that kind.

By Mr. MERRICK:

Q. Do you recollect that woman's face you saw dancing?

A. I did not pay much attention to her face; I paid much more attention to her legs.

Q. Do you think you would recognize them if you were to see them?

A. I do not think I would.

SATURDAY, *June* 22, 1867.

The Court met at 10 a. m.

Mrs. MARTHA MURRAY sworn and examined; residence, Washington.

By the DISTRICT ATTORNEY:

Q. State where you live.

A. I stop now at the Herndon House, corner of Ninth and F streets.

Q. How long have you been living at the Herndon House?

A. For ten years, there in the house.

Q. What is your husband's name?

A. Patrick Jones Murray.

Q. Is he proprietor of the Herndon House?

A. He was at that time, but he sold out long ago; he is not now.

Q. What period do you refer to when you say "at that time?"

A. To the year 1865; about the month of April of that year.

Q. It was a hotel at that time?

A. Yes, sir.

Q. Where is the Herndon House?

A. At the southwest corner of Ninth and F streets, opposite the Patent Office.

Q. During the year 1865, did a man by the name of Lewis Payne or "Wood" board at that house?

A. There was a man who stated he was that man who boarded there. I testified before the military commission at the arsenal on the occasion of the trial of the conspirators, and I at that time stated, when asked about the man Payne, that to the best of my knowledge I had seen his (Payne's) face before, and that it was at our house that I had seen it.

Q. How long did he remain with you?

A. From Friday till that day two weeks.

Q. Do you remember what month? and if so, what day of the month it was that he left your house?

A. I declare I cannot tell now. I gave the statement on the occasion of the other trial, and I suppose it is on record. I think it was on Friday.

Q. Was it on "Good Friday," the day of the President's assassination?

A. I know he was two weeks at our house.

Q. What month was it?

A. It was before the assassination of the President.

Q. How long before?

A. Two weeks before. He left our house on Friday, and it must have been that very Friday. It is on record there, and I presume you can ascertain from that. I mean the day of the assassination.

Mr. MERRICK. I object, your honor, to the witness stating conclusions from premises of her own, and desire that she should be restricted to facts.

The COURT. She can state the fact as to what day it was, and then give the reasons why she believes it or knows it to be that day. The witness will proceed.

WITNESS. The day of the assassination this man was at our house. We always had a four o'clock dinner. He came into the sitting-room, or the place where persons generally came in to pay their board, and said that he wanted to pay his bill; that he was going away to Baltimore. He paid his bill, and I ordered dinner for him; or rather, called the man and told him to have his dinner sent up to the dining-room earlier than usual. It was then three o'clock. It was done, and that was the last I saw of him.

Q. Do you know what room he occupied in your house?

A. Yes, sir, I do.

Q. State it.

A. He occupied the front room right on the corner of Ninth street; room called "No. 6."

Q. What story?

A. I do not know, but I suppose the third story. The parlor is on the second story, and it was the room over that.

Q. Do you know whether any one came to your house in company with him when he first applied for board?

A. No one at all. It was to me he applied. I was coming down stairs when he came in and asked me for a room. No one was with him at the time.

Q. Did you know Mrs. Mary E. Surratt?

A. No, sir.

Q. Do you remember of her coming to your house on any occasion?

A. No, sir.

Q. Do you know the prisoner, John H. Surratt?

A. No, sir.

Q. Any member of his family?

A. No, sir.

WILLIAM H. BELL, servant—residence, Washington—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Whose servant are you?

A. Secretary Seward's.

Q. How long have you lived with Secretary Seward?

A. Three years.

Q. In the month of April, 1865, were you living there?

A. Yes, sir.

Q. State whether you remember the occurrence at Mr. Seward's house on the 14th of April, on the evening of that day.

A. I do.

Q. Will you commence at the beginning and state what you saw?

A. On the 14th of April, 1865, I was in the house of Mr. Seward, at the time of the assassination. About a quarter past ten, I presume it was, the bell rung. I went to the door. A tall and heavy-built man approached. He seemed to be a young man, so far as I could judge. He said he wanted to see Mr Seward. I told him that he could not see him, from the very fact that Mr. Seward was sick in bed, and the orders were strict not to allow any one to come in. He said, "I am sent here by Dr. Verdi, Mr. Seward's family physician." He held in his left hand a little package, which I supposed to be a prescription. It had a prescription paper on it. He said he wanted to see Mr. Seward. I stated he could not see him. He says, "I must see him; I am sent here by Dr. Verdi to let him know how to take this medicine, and I must see him." I says, "You cannot see him by any means at all; he is asleep just about this time." He insisted that he must see him. I spoke rather rough to him. He started to go up; and having spoken rather rough to him, I said to him that I hoped he would excuse me. I had no idea then that he was an assassin. He spoke rather politely to me, and said, "Oh, that's all right." I told him that I

was just doing my duty. Of course I had no right to insult him, not knowing who he was. He started up stairs, and I went on ahead of him. When he had reached the third story, and got near Mr. Seward's door, Mr. Frederick Seward came out of his room and spoke to him. He told Mr. Frederick that he wanted to see his father; that he had been sent there by his family physician, Dr. Verdi, with a prescription. Mr. Seward went into his father's room, and observing that he was asleep, came out and pulled the door to after him, and told this man that he could not see his father; that he was asleep, and that he would give him the prescription; he would attend to it. The man said that would not do; and thereupon a discussion arose between the two as to whether he should be admitted or not, Mr. Frederick insisting that he should not, and the man insisting that he would see him. Finally, he commenced talking so rough, that I said to him, "Don't speak so rough to that gentleman; that is Mr. Seward's son, the Assistant Secretary." I had been standing by the side of the man all this time. He was very polite to me, and said, "I know that; that is all right." After awhile he pretended that he had come to the conclusion to leave the house, I suppose, as he started to come down stairs. I got in front of him, and attempted to lead him down. He walked very heavy going up, and also coming down. He had on new boots from all appearances, from the noise they made. I turned round to him, after having come down three steps, he behind me, and said to him, "Don't walk so heavy, please." He replied, "I know that; that is all right." By the time I turned round to make another move to come down stairs, he had jumped back, and had Mr. Frederick by the collar hitting him over the head. What he struck him with I am unable to say, but I think it was a knife. I then came down stairs immediately, ran to the door and gave the alarm. I ran down as far as General Augur's office.

Q. Where was that?

A. At the corner of Fifteen-and-a-half street and Pennsylvania avenue. From the noise that I made three soldiers ran down off the piazza; but by that time he had run out.

Q. You have stated where General Augur's headquarters were; will you now state where Mr. Seward's house was?

A. Mr. Seward's house is right in the centre of Fifteen-and-a-half street, between H and Pennsylvania avenue.

Q. In this city and District?

A. Yes, sir.

Q. District of Columbia, and city and county of Washington?

A. Yes, sir.

Q. On what square does it front?

A. It fronts on Madison square, west side.

Q. What square is front of it?

A. Lafayette square.

Q. Is there any statue in the square?

A. Yes, sir.

Q. What is that?

A. Jackson statue.

Mr. PIERREPONT. Now proceed with your narrative.

A. After those three soldiers came down, as I was going on to say, the assassin ran out of the house and got on his horse. When I came down from the stairs I did not observe his horse at all in front of the door. When he got on his horse these three soldiers were about three paces behind me. I hallooed, "There he is, getting on his horse now." He got on his horse and started off toward H street, I behind him, and also these three soldiers. He kept on up 15½ street to I, when I lost sight of him. Whether he went out Vermont avenue or 15th street, I am unable to say.

Q. When did you next see the man?

A. To the best of my recollection it was the 17th of April, at General Augur's headquarters.

Q. Who was he

A. He gave his name as Lewis Payne.

Q. He was the one who was tried as Lewis Payne?

A. Yes, sir; the one who was tried and convicted.

Q. I do not remember whether you picked up anything, or whether it was some other person?

A. No, sir; I did not.

Q. You neither picked up a hat nor a pistol?

A. No, sir; but they were both picked up in the house next morning.

Q. Did you see them?

A. Yes, sir; Mr. Stanton, the Secretary of War, showed them both to me.

Q. You would recognize them if you were to see them again.

A. I would recognize the hat, but I am unable to say whether I would recognize the pistol or not.

Q. After you went back, did you go into Mr. Seward's room?

A. After I came back, I went into the hall, and first met Colonel Seward. He had a wound on his forehead and one on his wrist, and was standing there with a pistol in his hand, the hall at the time being crowded with people. That was not over two minutes after the assassin had left the house. The whole occurrence occupied but a minute or so.

No cross-examination.

FREDERICK W. SEWARD, Assistant Secretary of State—residence, Washington—sworn and examined.

By Mr PIERREPONT.

Q. Will you state, if you please, what official position you occupy?

A. That of Assistant Secretary of State.

Q. Were you such in April, 1865?

A. Yes, sir.

Q. In April, 1865, where did you reside?

A. I resided with the Secretary of State, at Madison Place, where I do at present.

Q. Opposite what square?

A. Opposite Lafayette square.

Q. What is the number?

A. I think there is no number.

Q. How is it with reference to the square?

A. It is about opposite the middle of the end of the square.

Q. State where General Augur's headquarters were at that date.

A. General Augur's headquarters at that time were in the next house, on the left-hand side. They were on the corner of the avenue and Madison Place, or 15½ street as it is sometimes called.

Q. Close by?

A. The next house. The houses do not adjoin, but they stand near each other.

Q. As a mere technical matter I will ask you in what District and county the house was?

A. In the city of Washington, District of Columbia.

Q. Did you know Ford's theatre, the place where the President was shot?

A. Yes, sir.

Q. On what street was it?

A. I am not sure that I can state the number of the street.

Q. You have been at the theatre?

A. Yes, sir; I know its locality, but I cannot state what street it is on.

Q. Will you state in what city, district, and county, the theatre where the President was shot and killed is?

A. In the same district, city, and county that I have previously mentioned.

Q. City of Washington?

A. Yes, sir.

Q. State where you were on the night of the 14th of April, 1865.

A. I suppose you have reference to the time of the attempted assassination?

Mr. PIERREPONT. Yes, sir.

WITNESS, resuming. At that time I was in my own room, which adjoins that of my father, in the third story of the house.

Q. Will you please explain which way the house fronts?

A. The house fronts towards Georgetown.

Q. It fronts the square exactly?

A. Yes, sir.

Q. State the position of your father's room in the third story?

A. His was the front room in the third story, on the south side.

Q. At the corner, was it?

A. Yes, sir; the left-hand corner as you front the square. My room was on the other side.

Q. Same front?

A. Yes, sir; the two rooms occupy the whole width of the house.

Q. What was your father's condition then? Describe how he was situated that night; and state where he was.

A. He had been badly injured by a fall from his carriage several days before. He had a fractured arm, and a fractured jaw, and some apprehensions were entertained that he might not recover from his injuries. He was under medical treatment at the time, and was kept as quiet as possible in his room.

Q. Will you state his condition and position in the bed, whether he was lying, or whether he was on a frame work, or how?

A. He was usually lying in a recumbent position, but generally about half raised by one of those frame works which are made for the accommodation of the sick, and mostly used in hospitals.

Q. What was his physical condition on this night?

A. He had been very restless during the day, and it had been difficult to compose him to sleep. On this night we were all endeavoring to keep him as quiet as possible, in order that he might sleep.

Q. Which arm was broken?

A. The right arm.

Q. Do you know on which side of the bed he was lying?

A. He was lying on the side towards the front of the house.

Q. State whether that was the right side of the bed.

A. It was the right side of the bed as he lay in it. His object in lying there, as we understood at the time, was to prevent his broken arm from coming in contact with the bed. He lay right on the edge of the bed, and his arm projected over. During the day the nurses were continually watching to see that he did not fall from the bed, as he insisted on lying just at the edge in order to ease this arm.

Q. State who the nurses were, and who were in the room at this time.

A. My sister was in the room. The nurse, George Robinson, was in the room also, when I left it. I had, as I have before stated, stepped into my own room. From our anxiety to keep the sick-room quiet, we had as few remain in there as possible.

Q. Your sister was a young lady, unmarried?

A. Yes, sir.

Q. Is she living?

A. No, sir; she is dead.

Q. Was your mother in the house?

A. Yes, sir; she was in her own room, I think, though I did not see her at that time. Her room was a back room on the same floor. It was on the same side of the house with my father's room.

Q. Was Mrs. Seward, your wife, in the house?

A. She was, and was in my room.

Q. State whether your mother died afterwards?

A. She died on the 21st of June following.

Mr. BRADLEY. I would like to know where all this is to lead, and what is the object of it.

Mr. PIERREPONT. My object is to show the reason why these parties are not called here—to show that they are dead.

Q. Will you state who else was in the house?

Mr. BRADLEY. I presume it is understood that all this examination as to the acts of any of the other of the parties named in the indictment, except the prisoner, is subject to our exceptions?

Mr. PIERREPONT. Certainly; that is understood.

Q. Will you state who else were in the house?

A. My brother, Augustus H. Seward. I do not know that there were any other persons at that time, except the nurses, servants, and visitors, who were coming and going during the evening.

Q. Will you state all that occurred on the evening in question, as far as your memory will serve you?

A. About ten, or a little after ten, o'clock that evening, I heard the sound of some persons coming up stairs. I stepped into the hall to see who it was. At the head of the stairs I met a man wearing a hat with a light overcoat, well dressed and tall, who said that he was a messenger from Dr. Verdi. He either said so or William Bell did. I cannot now recall which. William Bell, I will state here, came up with him. The man said that he was instructed by the doctor to deliver some medicine to my father, and to deliver it personally. I cannot recall the words or expressions that either of us used, but the substance of the conversation was that I told him that we were endeavoring to compose my father to sleep, and did not, therefore, want him disturbed, and that I would take the medicine and give it to him. To that he replied that the doctor's orders were that he should see him personally. I made objections and he insisted. I went over the ground, I think, several times with him, the conversation lasting, perhaps, three or four minutes. He made the impression upon me of being a man rather dull of comprehension, and as having no desire other than to obey his orders literally. Finally I said, "It is not worth while to talk any longer about it; you cannot see Mr. Seward. I will take the responsibility of refusing to let you see him. Go back and tell the doctor that I refused to let you see him, if you think you cannot intrust me with the medicine I am Mr. Seward, and in charge here. He will not blame you if you tell him I refused to let you see him." He hesitated a moment, and then said, "Very well, sir, I will go," or words to that effect. He turned about, and as I supposed proceeded to go down stairs. He stepped down, I think, one or two steps, and I had turned, or was about turning, to go to my room, when a noise behind me occasioned me to turn and look back. I found that he had turned back and was springing up the steps with a pistol in his hands. The next moment he was at my side, with the pistol at my head. There was no time for thought or reflection. I remember only thinking at the moment that *there* was an additional reason why he should not go in. I did not go so far as to logically make out what his object was. I remember noticing the shape of the pistol, which was that of a navy revolver. The next instant I heard the click of the lock, and then remember to have thought, "Well, the pistol has missed

fire." Then instinctively I raised my hands to take hold of him. A struggle ensued, and after that my recollections became indistinct and blurred, but as near as I recall I felt my right-hand pressing against the wall—I presume, to save myself from falling; and that putting my left-hand to my head found a hole in my scull. Then, I suppose, from what I have learned since—though I did not know it at that time—that he got into my father's room by his pushing against me and I against him, both stumbling and falling into the room together. In the room the gas was turned low, but the gas in the hall was bright. Having been partially stunned by the blow that he had given me, I have only an indistinct remembrance of what took place there, except that there was noise and confusion, voices and struggling. The only distinct remembrance that I have about it is, of seeing two men lift my father from the floor. I noticed that his face was bloody, and that the blood was streaming from his throat; and I heard one of the men say to the other, "He is not dead." This was said in a low tone of voice. Then I turned and walked, or staggered, to my own room, and met on the way my brother having two cuts in his forehead, from which I saw the blood streaming. I went back to my own room and laid on the lounge to wait for medical assistance. After that I gradually fell into a coma; a state of stupor came over me by degrees, like as if I were falling to sleep. I remember seeing the doctors and members of the family come in, but I found myself unable to communicate with them distinctly, as I could not articulate. I saw nothing further of the man who made the attack, and have no distinct recollection of what happened after that until I began to recover.

Q. You were not present at the trial of the conspirators?

A. No, sir.

Q. When did you begin to recover?

A. I think it was in June when I was first able to ride out; possibly July. I think it was in October that I was first able to resume my duties and go to the State Department.

No cross-examination.

WILLIAM BELL recalled.

By the DISTRICT ATTORNEY:

Q. Will you state if you saw the horse of which you have spoken as having been mounted by the assassin as he left the house?

A. I saw the horse, but have a very poor recollection of him. So far as I could judge of him that night, he was a dark bay horse, and very stout. He seemed to start off in a pace in the first place, and did not seem to go very fast until he got to I street.

Q. Did you ever see him afterwards?

A. No, sir; not to my knowledge.

Mrs. FREDERICK W. SEWARD—residence, Washington—sworn and examined.

By Mr. PIERREPONT:

Q. You are the wife of Mr. Frederick W. Seward?

A. Yes, sir.

Q. With a view of letting you go as soon as possible, I will direct your attention at once to the scene in the house of your father-in-law, on the 14th of April, 1865. Do you remember it?

A. Yes, sir; very well.

Q. Will you give a description of what you saw?

A. When I went from my room into the hall I found a man——

Q. Can you tell what time in the evening it was?

A. Between 10 and a quarter past. When, as I say, I went from my room into the hall, I found a man and Mr. Seward in the entry. Mr. Seward was holding the door of his father's room. This man had hold of Mr. Seward with

one arm, pushing him, and with the other pushing the door. Just as I looked at them the door burst open, and they both went into the room. I followed them in. The room was quite dark. The next thing I saw was a man jumping on the bed where the Secretary of State was lying.

Q. When you say the room was quite dark, do you mean to say that there was no light?

A. There was one burner lit, but the gas was turned down very low, and there was a shade in front of it. The next thing I saw was men fighting at the foot of the bed, as if they were preventing some one from going round to the other side of it. The head of the bed stood against the wall. Then there was a rush out of the room. My sister, Miss Seward, said to me, "Don't let them carry father off!"

Q. That was your husband's sister?

A. Yes, sir. I went to find where Mr. Seward was. Around on the other side of the bed I found him lying on the floor, covered up with the bed-clothes. Soon after some one came to pick him up, and I went to look for Mr. Frederick Seward. I found him leaning against the door that goes into the hall, bleeding profusely. As he was very badly hurt, I took him into the hall, and from there into his room. He then walked across the room and threw himself upon the lounge, and there he remained most of the night.

Q. Will you state what physicians came?

A. Dr. Norris, Surgeon General Barnes, Dr. Verdi, and Dr. Wilson.

Q. Do you remember which doctor came first?

A. I think it was Dr. Verdi; he and Dr. Norris came about the same time.

Q. What became of your husband after that?

A. He never spoke; never articulated distinctly for a long time after that.

Q. How long before he was able to speak?

A. About three weeks, I should say; except, perhaps, to say "yes" or "no."

Q. What physician attended your father and your husband?

A. Dr. Norris was attending Mr. Seward, my father, and Dr. Wilson had special charge of my husband.

Q. Was Dr. Verdi likewise the attendant physician of your father at that time?

A. He had nothing to do with his wounds.

Q. But I mean before the assassination was attempted?

A. He was the family physician.

Q. Did Surgeon General Barnes continue to attend?

A. Yes, sir.

Q. Who else was in the room besides your sister-in-law when you got there?

A. A nurse by the name of Robinson.

Q. What is his first name?

A. I think, George.

Q. Did you see Colonel Seward there?

A. I did not see him in the room. I saw him up stairs after Payne had left.

Q. What was his condition?

A. He had a cut across his forehead.

Q. Any other cut?

A. A slight one on his hand.

Q. Did you ever see the assassin afterwards?

A. No, sir.

Q. And you did not go down stairs, I suppose?

A. No, sir.

Q. And know nothing about his riding away?

A. No, sir.

No cross-examination.

AUGUSTUS H. SEWARD, colonel United States army—residence, Washington—sworn and examined.

By Mr. PIERREPONT:

Q. You are the son of the Secretary of State?

A. Yes, sir.

Q. Will you state where you were on the night of the 14th of April, 1865, when the attempt was made on your father's life?

A. I was at my father's house, in this city, on that night.

Q. Will you state what you saw?

A. I retired to bed that evening about half past seven, with the understanding that I would be called about 11 o'clock to sit up with my father. I very shortly fell asleep, and so remained until awakened by the screams of my sister. Then I jumped out of bed.

Q. That sister has since died?

A. Yes, sir. I then jumped out of bed, and went into my father's room, in my shirt and drawers.

Q. What did you see?

A. The gas was turned down rather low in the room, and I saw at the foot of father's bed what appeared to be two men, the one trying to hold the other.

Q. Was this sister there still?

A. I did not see her then. I understand from other persons who saw her, that she was there. I seized the person who was held, by the clothes on his breast, supposing it was my father delirious; but on taking hold of him, I knew from his size and strength it was not him. The thought then struck me that perhaps it was the nurse who had become delirious, sitting up in the room, and was striking about at random. Knowing the delicate state of my father, I shoved him towards the door, with the intention of getting him out of the room. While shoving him, he struck me five or six times on the forehead and the top of my head, with what I supposed to be a bottle or decanter that he had seized from the table, and during this time he said, in an intense but not a loud voice, "I am mad; I am mad." On reaching the door that went into the hall, he gave a sudden turn, sprung away from me, and disappeared down stairs. When he came within range of the light in the hall, which was bright, I saw that he was a large man, with dark straight hair, smooth face, and no beard; I had at the same time a view of the expression of his countenance.

Q. Did you see him afterwards?

A. I saw him the day after he was taken on board the Monitor.

Q. And who was it?

A. He answered in description the same person in every way that I had seen on that night.

Q. What was his name?

A. Lewis Payne, he was called.

Q. These blows of which you have spoken—what effect had they on you?

A. They were not serious; only flesh wounds.

Q. Were you cut?

A. Yes, sir.

Q. Where?

A. I had some three cuts on my forehead; some three more on the top of my head, and one on my left hand.

Q. Do you know what the cuts were made with?

A. I did not know at the time. I supposed then it was done with a bottle.

Q. Do you suppose so now?

A. No, sir; I do not, since I have learned what happened.

Q. What further?

A. After he went down stairs I went in my room and got a pistol, which I had, and ran down to the front door. While I was standing there the servant boy came back and said the person——

Mr. MERRICK. Never mind what he said.

Q. Was it or not William Bell?

A. Yes, sir.

Q. What further did you see?

A. I did not see anything further of the man down there, who made the attack, because he was gone. The first thing I saw was the servant boy.

Q. Did you see Doctors Verdi and Barnes there?

A. Not at that time.

Q. How soon afterwards?

A. While I was down there, I sent some persons after the doctors.

Q. How soon did they come?

A. Well, Dr. Verdi was the first one who came.

Q. State as to the promptness with which he came.

A. I think they were all there within three-quarters of an hour.

Q. How soon after the occurrence before Dr. Verdi came?

A. I should say twenty minutes after.

No cross-examination.

JAMES L. MADDOX, property man, Holiday Street theatre—residence, Baltimore—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. At present in Baltimore.

Q. How long have you been living in Baltimore?

A. Two years this August.

Q. What is your business?

A. Property man, Holiday Street theatre.

Q. Did you ever live in this city?

A. Yes, sir.

Q. How long have you lived here?

A. It has been two years since I moved from here to Baltimore.

Q. How long have you resided in Washington city?

A. About sixteen years.

Q. State what your business was in this city.

A. Property man.

Q. Where?

A. At Ford's theatre, in Washington, on Tenth street, in this city and District.

Q. Were you employed as the property man at Ford's theatre on the 14th of April, 1865?

A. I was.

Q. State whether you were at the theatre that night?

A. I was.

Q. What part of the theatre were you in at about 10, or between the hours of 10 and 11?

A. I was on the stage.

Q. Engaged in your duties there?

A. Yes, sir.

Q. Do you remember hearing the report of a pistol?

A. I do.

Q. State about what time that was?

A. About ten or fifteen minutes past ten, I think. I would not say positively.

Q. Had you seen or heard anything, before hearing the report of the pistol, that attracted your attention?

A. No, sir.

Q. Where were you at the time you heard this report?

A. I was on the left-hand side of the stage, and first entrance; the same side the President was sitting on.

Q. Who was standing near at that time?

A. That I could not tell.

Q. You do not recollect?

A. No, sir.

Q. Do you recollect about what part of the play you heard this report?

A. It was in the third act.

Q. Do you remember who were on the stage at the time?

A. Harry Hawk, the comedian.

Q. What character did he take in the play?

A. Asa Trenchard.

Q. Was he the only one on the stage at that time?

A. He was.

Q. At that time did you observe any of the other actors or actresses?

A. I could have seen them if I had taken notice. I did not take notice of them at all.

Q. Could you state their relative positions?

A. No, sir.

Q. Do you know Mr. Withers, the leader of the orchestra?

A. Yes, sir.

Q. Did you see him about that time?

A. No, sir; I did not see him on the stage that night at all.

Q. Will you state what you did after you heard the report of a pistol?

A. Yes, sir. As soon as I heard the report of the pistol, I stepped back from where I was, and saw a person run out of the first entrance on the right-hand side, opposite where I was, and then heard some person halloo for water. I then run to my property room just off the stage, and got a pitcher, and carried it and gave it to an officer. There was a police officer trying to get up into the box, and he handed the water up. I did not know then what had happened.

Q. After you gave him the water, state what you next did?

A. I cannot recollect. I have often tried to recollect what I did do then, but I was so excited, as was everybody, that I cannot recall.

Q. Do you recollect of seeing the President after that?

A. No, sir; not after that.

Q. Do you remember what time it was that the President entered the theatre that night?

A. I do not.

Q. Do you recollect hearing loud applause?

A. No, sir.

Q. Was your attention attracted by that at any time?

A. I saw him after the curtain was up. I went into the first entrance for the purpose of taking a look at the President, as we always did.

Q. How long was that before you heard the report of the pistol?

A. About an hour and three-quarters, or two hours; I could not say for certain.

Q. Where were you standing at that time?

A. (No response.)

Q. From what point in the theatre did you get an observation?

A. The first entrance on the right-hand side—right opposite from where the President was sitting.

Q. Will you describe the box that he occupied?

A. It was on the left-hand side of the stage. On the right-hand side going in from the front of the theatre.

Q. Was it the next one to the stage?

A. It was a double box. It was turned into a single box that night, however. The partition was taken out of it. It was the next one to the stage by being made a single box.

Q. Did you know the President was coming there that night?

A. Yes, sir.

Q. How did you know it?

A. I heard the treasurer of the theatre say so.

Q. Do you recollect of seeing the box prepared for him?

A. Yes, sir.

Q. By whom?

A. I saw H. Clay Ford dressing the box.

Q. Who was Mr. Ford?

A. Treasurer of the theatre.

Q. Do you recollect anything being brought to the theatre for the purpose of decorating the box?

A. I brought two American flags, with which to help decorate it.

Q. Do you recollect of a chair being brought there?

A. I recollect seeing the chair brought down to go into the box.

Q. Was it generally known that this theatre had been decorated and prepared?

Mr. BRADLEY. How can he answer that.

The DISTRICT ATTORNEY. You knew the fact?

A. Yes, sir.

Q. Did you know John Wilkes Booth?

A. I did.

Q. How long had you known him?

A. I had known him for about three years before the assassination.

Q. Was he connected with the corps of actors at Ford's theatre at that time?

A. No, sir.

Q. Had you seen John Wilkes Booth on the 14th of April?

A. I had.

Q. Where had you seen him?

A. In front of the theatre, and in the restaurant next to the theatre.

Q. At what time did you first see him in front of the theatre?

A. I think it was somewhere about 4 o'clock in the afternoon.

Q. On foot or horseback?

A. On horseback.

Q. What restaurant do you allude to?

A. Mr. Taltavul's.

Q. Do you recollect seeing him in company with Mr. James Ferguson?

A. No, sir.

Q. Did you see him in front of Mr. Ferguson's—Booth?

A. No, sir. I saw him in front of the theatre.

Q. That was the first time you had seen him?

A. I think so.

Q. Where did you next see him?

A. In the restaurant.

Q. Whose restaurant?

A. Messrs. Taltavul & Grillo's.

Q. What time was that?

A. I could not say.

Q. Was it after dark?

A. No, sir; it was before dark?

Q. Did you see him in front of the theatre, or at either one of these restaurants afterwards?
A. No, sir; I never saw him again.
Q. Do you know where Booth kept his horse?
A. Yes, sir.
Q. Where?
A. Down the alley back of the theatre.
Q. State how far from the theatre it is.
A. I cannot tell the distance.
Q. Point out some object in this room.
A. Longer than the length of this court-room.
Q. Whose property was this?
A. It was a Mrs. Davis's; I had the renting of it.
Q. Who rented or leased this stable to Booth?
A. I did.
Q. Did you collect the rent for it?
A. Yes, sir; $5 a month.
Q. How many stalls were there in this stable?
A. Two, if I am not mistaken.
Q. How long before the assassination was it that he engaged this stable of you?
A. I think it was in December.
Q. Was he in the habit of keeping his horse there?
A. He had a horse and buggy there.
Q. Only one horse?
A. That is all.
Q. Did you keep him there regularly?
A. Yes, sir.
Q. Do you know who attended to his horse there?
A. I know him by his nick-name, "Peanut John."
Q. You know him by sight?
A. Yes, sir.
Q. Did you see "Peanut John" that night?
A. Yes, sir.
Q. At what hour in the night?
A. I saw him nearly all the time. He attended at the stage door, to keep strangers off the stage.
Q. Do you recollect of seeing him in company with Booth that night?
A. No, sir.
(The witness pointed out, on a diagram handed to him, the exact position of the stable. He designated the locality of the same with a red pencil mark.)

Cross-examination by Mr. MERRICK:

Q. What were your duties in the theatre that night?
A. I was property man.
Q. Did your duties require you to be on the stage?
A. Yes, sir.
Q. What were Spangler's duties in the theatre that night?
A. He was a carpenter. He ran the flaps.
Q. Shifting the scenes you mean?
A. Yes, sir; he had one side of the stage to attend to.
Q. Did you see Spangler on the stage that night?
A. I did.
Q. Was he on the stage all the time during the play?
A. Yes, sir.
Q. Are you positive he was there all the time during the play?

A. I am; I spoke to him about three minutes before I heard this pistol-shot fired.

Q. What would have been the effect of his absence from the stage during the progress of the play?

A. He would have been very apt to have been missed, because there was no person there to have changed the scenes for him.

Q. Are there many scenes in the "American Cousin" in the way Miss Keene plays it?

A. About seven, I think, in the last act.

Q. How many acts were there?

A. Three.

Q. How many scenes in the other acts?

A. Two in the second, and four or five, I cannot say which, in the first.

Q. How long does the third act last?

A. That I could not say.

Q. What part of the third act did you hear the pistol-shot?

A. I think it was the second scene.

Q. Can you give an approximate idea of how long it lasts—the third act?

A. A half an hour, I think.

Q. If, in the course of that half hour, Spangler had been absent from the stage, it would have produced confusion, as I understand you?

A. Yes, sir.

Q. Have you ever seen Spangler wearing a moustache?

A. No, sir.

Q. What time in the day did you hear the President was coming to the theatre?

A. Between 12 and 1.

Q. Do you know at what time he determined to come, or it was understood he was to come. I mean at what time in the morning?

A. Between 12 and 1 o'clock I heard it.

Q. You were about the theatre all the time?

A. Yes, sir.

Q. Your duties required you there morning and night?

A. Yes, sir.

Q. Did you see Spangler in front of the theatre that night?

A. I did not.

Q. What was your position just before, or at the moment of hearing the pistol-shot?

A. I did not have any particular position.

Q. Do you recollect whereabouts you were?

A. Yes, sir.

Q. Where?

A. The first entrance, on the left hand. The same side the President's box was on.

Q. Do you recollect crossing the theatre and stage shortly before you heard the shot?

A. Yes, sir.

Q. How long before?

A. About three minutes, I think.

Q. Who did you observe in crossing the stage on that occasion, about three minutes before you heard the pistol-shot?

WITNESS. Behind the scenes?

Mr. MERRICK. Yes, sir.

A. I recollect of Spangler being there, because I spoke to him as I crossed.

Q. And was he in his place?

A. Yes, sir.

Q. Do you mean to say that you were on the stage all the time that the play was progressing, or off of it at any time?

A. I was in front of the house during the second act.

Q. You were on the stage during the third?

A. Yes, sir.

Q. At what time in the progress of the third act did you resume your place on the stage?

A. I was on the stage when the curtain went up.

Q. During the second act where were you?

A. During the second act I went in front of the house.

Q. That is, the last part of the second act?

A. Yes, sir.

Q. You were in front of the house?

A. Yes, sir.

Q. Did you see Spangler in front of the house?

A. I did not.

Q. Do you know the prisoner at the bar?

A. No, sir. From my recollection, I never saw him before.

Q. Did you see any one there that looked like the prisoner at the bar?

A. I might have seen folks there, but I did not take notice of them so well as to recognize them.

Q. If you had ever seen Spangler there in front of the house, you would have noticed it, would you not?

A. I would.

Q. You knew what Spangler's particular duties were, of course?

A. Yes, sir.

Q. Had you seen Spangler in front of the house during the second act, would not your knowledge of his duties on the stage have attracted your particular attention to him in that place?

A. Yes, sir; it would.

Q. And you did not see him?

A. No, sir.

GEORGE T. ROBINSON, private eighth Maine volunteers—residence, Isle Au Haut, Aroostook county, Maine—sworn and examined.

By the DISTRICT ATTORNEY:

Q. State to the jury, if you please——

Mr. MERRICK. Does this examination relate to the attempted assassination of Mr. Seward?

The DISTRICT ATTORNEY. It does.

Mr. MERRICK. I wish to call your honor's attention to an objection which we have before suggested, and I do so merely for the purpose of having it distinctly placed upon the records. I deem it necessary to do so, because I cannot see how far this is going, and where it is to end. I must say, sir, that as far as I am able to judge of the case of my learned brothers on the other side, this examination seems to me to be but a useless consumption of time Sergeant Robinson's testimony relates to the attempt upon the life of the Secretary of State, made by Lewis Payne. This indictment is for the murder of Lincoln, and the charge of a conspiracy is a conspiracy to kill Mr. Lincoln. Now what the attempted killing of the Secretary of State may have to do either with the substance of the charge in the indictment, or with the conspiracy that is spoken of in the indictment as the inducement, I cannot perceive. I do not propose to argue the question, your honor, but simply to submit it to the court in a more specific shape than has yet been done this morning. I repeat, the indictment is for the murder of Mr. Lincoln; the conspiracy charged in the indictment is a conspiracy to murder Mr. Lincoln, and nothing else.

There is not a word in it with regard to Mr. Seward or anybody else but Mr. Lincoln, and what the killing of other parties, or the attempted killing of other parties, not named in the indictment, has to do with the charge named therein I cannot perceive.

The DISTRICT ATTORNEY. If your honor desires to hear argument I will proceed; but I deem it hardly necessary to say anything in view of the evidence before the court, and what we have repeatedly said we expect to show.

The COURT. I suppose it is understood that the prosecution expect to show that the attempted assassination of the Secretary of State is a part and parcel of the same plot and conspiracy which resulted in the taking of the life of Mr. Lincoln. If they do not show this, then, of course, the evidence cannot be considered as relevant, and will have to be ruled out. I thought such was the understanding on all sides.

Mr. PIERREPONT. Certainly it was.

The COURT. You may go on with the examination of the witness.

Mr. MERRICK. Of course, sir, as we have before stated, we reserve an exception. My only purpose was to have our objection clearly appear on the record.

Examination of witness by DISTRICT ATTORNEY:

Q. State where you live.

A. Isle Au Haut, Aroostook county, Maine.

Q. How long have you been living there?

A. About fourteen years.

Q. Which is your native State?

A. Maine.

Q. You are a married man?

A. Yes, sir.

Q. State if you were in the city of Washington in the year 1865.

A. I was.

Q. State how you happened to come here.

A. I was a soldier in the eighth Maine volunteers, and being wounded was sent to Douglas Hospital for treatment. I was wounded in May, 1864, and sent to Point Lookout, and from thence to Douglas Hospital for treatment.

Q. You were a private?

A. Yes, sir, private in company B, eighth Maine volunteers.

Q. How long had you been in the army before you were wounded?

A. About nine months.

Q. State if you were at the house of the Secretary of State on the 14th of April, 1865; and if so, in what capacity you were there.

A. I was there as a nurse to Mr. Seward.

Q. What was the matter with Mr. Seward at that time?

A. He had been injured by being thrown from a carriage.

Q. And you were there as nurse?

A. Yes, sir.

Q. State what occurred in that house on the night of the 14th of April.

A. Somewhere about 10 o'clock—a little before or after—a man came to the house.

Q. Will you state if you afterwards saw that man? and if so, where you saw him?

A. I saw him the next time at the trial of the conspirators at the arsenal.

Q. State who he was.

A. Lewis Payne.

Q. Now commence and state distinctly all that happened from the time that man came to the house till he left.

A. It was somewhere about 10 o'clock when the affair happened. The com

pany and all the members of the family, except Miss Fannie, had retired. She and I alone remained in the room. I had been detailed there in connection with a fellow-soldier as night nurse, and by request I sat up the fore part of the night. About half an hour after the family had retired, my attention was attracted by some one coming up the stairs rapidly, and stepping very heavily, so much so that Miss Fannie made the remark, "I wonder who is coming now. I should think some one who was not very careful for one approaching a sick-room." In the hall, near the door of the Secretary's room, he met Mr. Frederick W. Seward. Whether Mr. Seward was called out of his room or came out on hearing the man come up I cannot say. At any rate he met him. They had some conversation in the hall, which lasted several minutes. After they had been talking a minute or so Mr. Frederick Seward opened the door of the Secretary's room, came in, looked at Mr. Seward, who was asleep, and made the remark, "Father appears to be asleep; I guess I won't have him disturbed at present." He then turned round and went out. He left the door open several inches when he came in. When he went out he shut it entirely to. After he went out Miss Fannie went and looked out of the door, a minute, perhaps, then turned round, leaving the door partially open, came back, and then again went and looked out. She then closed the door, and went and sat down. Just as she was in the act of sitting down I heard a disturbance in the hall, sounding like one person striking another with a ratan cane, which I supposed was the case. I sprung up and went and opened the door to see what the difficulty was. I saw a man, whom I afterwards recognized as Lewis Payne, right close up to the door, and right behind him Mr. Frederick Seward, bleeding very profusely from the head. At the same instant I discovered the flash of a knife aimed at me, which I warded off to some extent, it striking me on the forehead and partially prostrating me on the floor.

Q. Is there a scar on your forehead?

A. Yes, sir; right on the edge of my hair, here. He pushed the door wide open, and then entered the room, making a bound for Mr. Seward's bed. Mr. Seward lay on the opposite side of the bed from the side which was next to the door where Payne entered. He got to the edge of the bed, and placing his hand on Mr. Seward's breast, struck at his neck with the knife which he had. Before this, however, as he passed me, near where I had partially fallen, he met Miss Fannie. She had sprung up about the same time, I presume, and met him about there. When he came in he had his hand behind him. As soon as he met her he brought his arm round and punched her out of the way, nearly punching her over me. She stopped where he had shoved her to, and turned round and looked at him till she saw him go to the bed, and make a blow at her father. She then hallooed "murder," and ran out into the hall, and cried out that there was some one trying to kill her father. She came back into the room, and went to the window next to the avenue—next to where the provost marshal's office then was—which I had shoved up some eight or ten inches, and which she shoved clear up, and then hallooed the same out there. After that I do not know what she did, or where she went. After I was knocked partially down, I jumped to my feet as quickly as possible, and while I was doing that Payne had struck two or three times at Mr. Seward, without hitting him. Before I got to him, however, he had cut the right side of his face. I looked for something with which to strike Payne, but saw nothing in the room that I could handle that was large enough to be of any service. I then jumped on the bed with the intention of striking him; but when I got there his arm was ready raised for another blow. I caught him round the arms from behind, and while I was doing this he cut him on the (left) side of his neck. As he was coming off the bed he reached the knife over his shoulder, I being behind him, and struck it into my shoulder to the bone, twice. We came off on the floor. He got his arm around my neck, and struck me two or three times under the

ear with the butt of his revolver, but he was in such a position that he could no hurt me. He then dropped that, and took hold of me, and then took his knife to strike into my breast or bowels. While he was doing this, we became clenched together, face to face. I then tried to throw him over my hip on his back, but my leg being wounded, it was not strong enough to stand under the heft of both of us. I succeeded, however, in getting the knife where he couldn't use it. He then tried to get me by the throat, and I tried the same by him, and succeeded so far as to get my hand under his jaw. My object was to get such a hold on him that I could in some way get him out into the hall, and pitch him over the banisters. I thought that would be the best way to get rid of him. Before I got to the door another person clenched him from behind. The room was rather dark, and I could not see who it was, and so I kept quiet. I thought if he was a confederate he might be as likely to cut the wrong person as the right one. As soon as we got out into the hall, where was a bright jet of gas burning, I recognized the person who had just come up as Major Seward. I spoke then for the first time, and said, "Major, for God's sake let go of me, and take the knife out of his hand, and cut his throat." He did not seem to understand me, or feel disposed to do it, and so I spoke the second time to the same effect, making the additional remark that I had his right arm, and he could not hurt him. Payne, unclinching his hands from around my neck, struck me again, this time with his fist, knocking me down, and then broke away from Major Seward, and ran down stairs. Mr. Seward not having hold of him, consequently did not detain him. On his way down, on the first flight, he overtook Mr. Hansell, a messenger at the State Department, who had been roused by the noise that had been made, and had apparently turned to go down stairs for for help. He came within reach of him and struck him in the back.

Q. What did Hansell say?

A. He started to say "O!" I presume, but he did not say it exactly. He hallooed out pretty loud. He did not utter any particular word that I heard. Some time during the fuss the major got cut. I do not know when it was done; certainly not after I got hold of Payne, because he had no way to do it. I did not see him after he got down stairs. I turned back after I saw him go down, and went in to attend to the Secretary, who I found had rolled off the bed on to the floor.

Q. Will you state how many blows you received during this struggle?

A. Four.

Q. State in what part of your body.

A. One on my forehead, two on my right shoulder, and one under my left shoulder blade?

Q. Very severe wounds?

A. Two of them were.

Q. Were you disabled in consequence of them; and if so, how long?

A. I was confined to my bed for three weeks. It was some six weeks before they were healed.

Q. Did you have an opportunity to see how this man was armed?

A. I did not. I only saw that he had a knife and revolver, which he dropped on the floor, or at least portions of it. It seemed to be a Whitney naval revolver.

Q. Did you have an opportunity to see what kind of a knife it was that he used?

A. It was in motion when I saw it, and so I could not tell exactly what kind of a knife it was; but it was a long, heavy one. It had a straight, stiff handle on it, with a cross-piece.

Q. Do you recollect his dress?

A. He was dressed in a light-colored, not exactly a drab overcoat. He had dark pants, and a sort of a slouch hat.

Q. What did he have on his feet that attracted your attention?

A. I think he had on cavalry boots. They were very heavy ones, but I did not notice them particularly.

Q. Was there anything on the boots?

A. I do not know whether he had spurs on or not.

Q. After he was gone, did you see any of these arms that you have described; and if so, what?

A. I found portions of the revolver—the barrel and stock, and cylinder, detached. The spindle was out of it, but was afterwards found in the room.

Q. Were you able to identify these things at the trial of the conspirators?

A. Yes, sir.

Q. You would be able to identify them now, if they were shown you?

A. Yes, sir.

Q. Did you ever see this knife afterwards?

A. I have. I have it in my possession.

Q. Where is it?

A. It is up at my boarding place.

Q. Where did you get that knife?

A. It was presented to me by the Secretary of War, through Judge Holt.

Q. And you are able to identify it as the knife you saw on that occasion?

A. I could not, positively. It resembles it.

Q. During your scuffle, or after it, was your attention particularly directed to Mr. Frederick Seward, the Assistant Secretary of State

A. It was.

Q. What was his condition?

A. The first I saw of him was in the room, moving round like one in a sleep.

Q. Did you observe the wounds on his person?

A. Yes, sir. His head was cut in various places. There seemed to be a very severe one, I think, as far as my recollection serves me now, on the left side of the head. He seemed to be very seriously injured. When you would speak to him, he would look at you, without making any reply. You could do anything with him you wanted to by taking hold of him. He seemed to have no will whatever of his own; more like a man in his sleep than anything else.

Q. Did you see Colonel Seward afterwards?

A. I did.

Q. What marks of violence did you observe on his person?

A. Various cuts on his head and forehead. They did not seem to be so serious.

Q. Did you return to the room of the Secretary of State?

A. I did. I found him lying on the floor.

Q. After you had gained your self-possesion, state what you did.

A. I do not think I lost that at all. I went directly to his assistance and found him lying on the floor on the opposite side of the bed, with a lot of bedding around him. I undertook immediately to discover if life was extinct. Feeling his wrist, I could not discover any pulsation at all. Miss Fannie came and wanted to know if her father was dead. I replied that I did not know, but was trying to find out. I pulled his clothes off and felt his heart; I found that it beat, and replied that he was not dead. The Secretary then opened his eyes, looked up and said, "I am not dead; send for a surgeon, send for the police, close the house." He spoke in those exact words, as near as I can recollect. I told him I had done all that, and requested him not to talk, as it made him bleed worse. I found where the wound was, and held my hand over it.

Q. Was he lying on the floor?

A. Yes, sir; and was bleeding profusely. As soon as assistance came we put him in bed.

Q. How long after that before the physician came?

A. I could not tell; but I should judge about fifteen or twenty minutes.

Q. Who was the physician who first made his appearance?

A. I could not tell, positively, because they were strangers to me. I should think, however, it was the Surgeon General. I could not tell, however, positively. There were three or four in attendance in a very short time.

Q. Did Payne strike at the Secretary of State after he had rolled out of bed?

A. No, sir. He did not roll out of bed until I pulled Payne away from him. Payne had his hand on his breast, and he could not, if he had desired to.

Q. State how many blows you saw Payne strike at the Secretary of State.

A. I should think as many as four or five, perhaps six.

Q. Describe the character of the blows; whether they were given with much force or not.

A. He seemed to strike with all the energy that he had. The first two or three times he struck at him, he struck beyond him—the first time in particular. The Secretary at the time was lying in a half-recumbent position. As Payne appeared and struck at him he exclaimed, "O!" and then seemed to go off into an insensible condition. He did not say anything more at any rate.

Q. How many blows did he actually strike him?

A. I think he only cut him with two blows—one on each side of his face.

Q. Were you present at the time the doctor examined the wounds?

A. Yes, sir.

Q. Did they appear to be severe wounds?

A. They did. I think his right cheek was cut clear through, so that you could see into his mouth; I am not positive about it, however, for it bled so hard I could not tell.

Q. Did he seem to suffer much pain?

A. He seemed to be insensible most of the time I was there.

Q. Did his cheek lie down on his neck?

A. Kind of slid down—hung only on the back part.

Q. You continued to act as his nurse from that time until the time of his recovery?

A. No, sir; I went away the next morning.

Q. When did you next see the Secretary afterwards?

A. I think the Wednesday or Thursday, three weeks from that time.

Q. You had hold of this man Payne, and therefore had an opportunity to form some estimate of his strength. Was he a very stout man?

A. He was a very large man.

Q. Was he a strong, muscular man?

A. I hadn't a fair opportunity to judge of that. I was under some excitement at the time.

JOHN V. PILES—residence, Prince George's county, Maryland—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. Prince George's county, Maryland.

Q. How long have you resided there?

A. Nearly forty years.

Q. Do you exercise any office there, or did you in 1865?

A. I was a justice of the peace about ten years—until within two years past. I am at present a commissioner of tax for the county.

Q. You were justice of the peace in 1865?

A. Yes, sir; in 1864–'65.

Q. Do you know John H. Surratt?

A. I did know him. I knew him years ago.

Q. Do you know him now?

(The prisoner was here requested to stand up.)

A. Yes, sir; I know him well enough.

Q. How long have you known him?

A. I have known him ever since he was a boy. His residence is not more than two or three miles from mine.

Q. State whether you had an interview with him in the early part of 1865, and whether or not you had any conversation with him in regard to his leaving the country and going to Canada.

A. In 1864 or 1865—I don't know which.

Q. State how long prior to April, 1865.

A. I did not commit that to memory. I think about three months, as near as I can recollect, before the assassination of Mr. Lincoln. About that time I had left home; I was working at my father's, or lower place, some mile or so from there. Mr. Surratt came down there for the purpose of getting me to sign some papers. I really cannot tell anything regarding the import of those papers.

Q. To get you to sign some papers?

A. Yes, sir; as a justice of the peace, in order to make them legal.

Q. State what he said to you in regard to the object of his visit.

A. Well, he seemed to be urgent to have me sign the papers, and having no pen, ink, or anything of the kind at the place, we proposed to go over to my brother's, about a quarter or a half mile off, and get pen and ink there. We started, and going along I asked him about his business and so on. The draft was on hand at that time, and I asked him about it. He said either that he wanted to get some money, or fix some papers to leave for his mother, or something of that kind. He told me he wanted to go away. I asked him where, or something of that sort, for I did not want him to go away, he had been in the neighborhood so long; and he said he wanted to go away to avoid the draft.

Q. Where did he say he was going?

A. I think he told me that he intended to go to Canada. It was rumored at that time that there were a great many going there in order to avoid the draft.

Q. State what he said in regard to the object of the conveyance to his mother; what he wanted to have done in case he did not return.

A. He said something about wanting to make his mother safe, or leaving her some money. It was something like that—what, exactly, I cannot now tell. It was probably a mortgage or deed to get money on to pay the expenses of his voyage—something like that. It was something about getting money.

Q. State what he said, as nearly as you can, in regard to making his mother safe in case he did not return.

A. I think I have told you about all that he said. I won't be positive as to whether he said to make his mother safe. It was something in that way.

Q. What did he say about coming back?

A. I think he said, if he did not return he wanted to make his mother safe, or something like that. I am disposed to think that he was going to make some arrangement to get money, and, perhaps, she was going to be responsible, or something like that. I do not remember exactly. I have never seen him since till now that I know of.

No cross-examination.

The court here took a recess for half an hour.

AFTERNOON SESSION.

Mr. Bradley asked that John Lee—being present in court—be recalled for further cross-examination.

Mr. Pierrepont objected. The same question had been raised and decided but the court in relation to other witnesses.

Mr. Bradley did not understand that the question had been definitely decided. They desired now to present it again, and to produce authorities to show why it would be the exercise of a proper discretion of the court to direct the recall of these witnesses for cross-examination.

After discussion upon the point presented, the court reserved his decision until Monday, and thereupon the court took a recess until Monday next, at 10 o'clock a. m.

The Court met at 10 a. m.

MONDAY, *June* 24, 1867.

As soon as the court had been called to order Judge Fisher read the following opinion upon the motion submitted on Saturday by the defence, asking the recall of witnesses for the purpose of further cross-examination:

I have been called upon again by the counsel for the prisoner at the bar to order the recall of witnesses summoned by the prosecution after the cross-examination has been ended and the witnesses dismissed, in order that the prisoner may recross-examine, with the view of inquiring of the witness so to be recalled as to whether some moral stigma is not resting upon his character, or whether he has not made statements out of doors, prior to the trial or since, in conflict with the testimony delivered at the bar, and thus to lay the foundation to impeach his credit. It is claimed as the prisoner's right.

I have heretofore refused to order witnesses to be recalled, and yet the counsel for the defence have again presented the question for a rehearing, and with so much apparent confidence of the rightfulness of the demand that, in a spirit of accommodation, I ventured to listen to their appeal, with the sincere desire to correct any error which I may have committed, if satisfied of its commission.

It could afford me no gratification, Heaven knows, to contribute by any error of my judgment to the rendition of a verdict of conviction in any case where the life of a fellow-being is involved, which but for such error might have been a verdict of acquittal. Such a reflection would be a lasting canker in my conscience, even in a case where I knew the conviction fell upon the guilty felon.

In such a spirit I have heard the counsel for the defence in this case through arguments which it seemed to me would have been better addressed to the jury than to the court, and have endeavored to discover whether I had not possibly erred. So far from being convinced that I was wrong in my decision, the more I have reflected upon the ruling I have made in the matter the more I am convinced that I was in the right.

In this case there have thus far been examined witnesses brought here from Canada, from Maine, from Vermont, from New York, from Virginia, and from Mississippi. The trial, it is conceded, will not close with the present month. The witnesses are engaged in the various pursuits of life. Some are farmers, some merchants, some lawyers, bank officers, railroad conductors, and others, all of whom, or most of whom, have necessarily to be away from their homes and business to attend this trial. They are, of course, subject to some, and most of them, to great inconvenience, not to say sacrifice, in attending court at all.

It is now demanded by the proposition of the counsel for the prisoner that each of these witnesses shall, after going through the examination and cross-examination, be either ordered by the court to remain till the trial shall be ended or the case argued to the jury, or else shall be compelled to return here after having gone home, to place himself in a position to have his character for veracity attacked by other witnesses, to be procured for that purpose by the defence, or to tell the public himself that he is a criminal without character and not worthy of belief. This is simply what the proposition of the counsel in substance amounts to; and a new statement of it in its simple nakedness is sufficient to show the impropriety of granting it. Let us take the case of the witness from Maine, examined on Saturday, for the purpose of illustration.

We will suppose that he has now gone home, and the prisoner's friends have telegraphed to his neighborhood and have been informed by somebody there that he has said something to somebody, no matter to whom or how carelessly, which they suppose may in some degree conflict with what he testified to when before the court. The counsel for the defence present their request to have him recalled from a distance of some 700 or 800 or 1,000 miles. He is sent for and asked whether he has not said thus and so to John Jones or John Smith or John Brown. He denies it Jones, Brown, and Smith are immediately subpœnaed, and come on from Maine, and when here they all swear that the witness for the prosecution did say something which was inconsistent with the testimony he gave. These three persons return to their homes, and afterwards the counsel for the prosecution discover that they have said, after going home, that they all had falsified in their testimony. They must all then be recalled to be questioned on the subject before they can be thus discredited, and they are brought back to be recross-examined by the prosecution, and with them the prosecution summon at least two more witnesses to discredit each one of them; and so the matter should go, each recall necessarily involving a multiplication of witnesses, going forward in geometrical progression. Can any human being tell when the case would end? The only solution of the question—the only termination of the case—would be the death of the prisoner or the jurors trying him. But for the intervention of death, it would be difficult to say which of two events would first happen, the end of this trial or the return of the children of Abraham to the holy city—their ancient Jerusalem.

It is just because all trials must have an end in some reasonable time, and because witnesses must have some protection from unending annoyance and inconvenience and sacrifice, and because jurors and judges are not expected to spend a generation in trying any cause, no matter how important; and because facilities are not to be afforded to have witnesses hunted down and wrongfully robbed of their fair standing in the community—their reputations attacked without a chance for defending them—that the rule of law, as I have heretofore ruled it, was established in England many generations since, and accepted as the law everywhere in this country where the law is rightly understood.

Lord Cranworth, (then Baron Rolfe,) in the case of the Attorney General *vs.* Hitchcock, 1 Ex., 99, very properly remarked in reference to the law of evidence on this subject, that it "must be considered as founded on a sort of comparative consideration of the time to be occupied in examinations of this nature, and the time which it is practicable to bestow upon them. If we lived for a thousand years instead of about sixty or seventy, and every case were of sufficient importance, it might be desirable to throw a light on matters in which every possible question might be suggested, for the purpose of seeing by such means whether the whole was unfounded or what portion of it was not, and to raise every possible inquiry as to the truth of the statements made. But I do not see how that could be; in fact, mankind find it impossible." I am, however, very doubtful if his lordship's limitation of a thousand years as a human lifetime would be a sufficient period in which to conclude a case of great magnitude and extensive ramifications, if we once throw aside the rules of evidence and embark on a wild ocean of inquiry, and raise every possible question as to the truth of statements made by witnesses.

The rule for conducting the examination of witnesses is as I have before stated it to be. 1. The party desiring the testimony of the witness calls him, and, after he is sworn, examines him in chief, putting no leading questions to him except it shall be manifest to the court that he is an unwilling witness, or unless it be apparent that the memory of the witness is at fault and may be set right by a suggestive question; or when the mind of the witness cannot be directed to the subject-matter of inquiry without having it particularly pointed out to him.

2. After the direct examination is concluded, the witness is handed over for cross-examination, during which he may be asked whether he has not made a statement contradictory of something—anything—said by him in the direct examination. But such questions must be put during the cross-examination, or at all events before the party producing the witness has dismissed him and he has gone away.

3. If a witness for one party be thus once examined and cross-examined and discharged, the party who calls him a second time makes him his own witness; just as he makes him his own witness whenever he proceeds to cross-examine him in relation to facts or circumstances not detailed in the direct examination.

But it is said that the rule is laid down differently by the judges of England in the case of Queen Caroline, in 1820, in resolving the following questions propounded to the learned judges by the House of Lords:

1. Whether, when a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination as to any declarations made by him, or acts done by him, to procure persons corruptly to give evidence in support of the prosecution, it would be competent for the accused to examine witnesses to prove such declarations or acts, without first calling back such witness examined in chief, to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts? And,

2. Whether, if a witness is called on the part of the prosecutor, and gives evidence against the defendant, and if after the cross-examination it is discovered that the witness so examined has corrupted or endeavored to corrupt another person to give false testimony in the cause, the counsel for the defendant may not be permitted to give evidence of such corrupt act without calling back such witness?

Both these questions were answered in the negative unanimously, so that the decision was that even when it should be discovered, after his cross-examination, that a witness for the prosecution had been guilty of supposed declarations or acts in endeavoring to suborn other witnesses, his conduct in that respect could not be inquired into from other witnesses until he had first been allowed the opportunity of explaining such supposed acts or declarations; and the reason given was, if such a course could be pursued without previous intimation to the witness, great injustice might be done both to the witness and the party calling him. It will be observed that the question only had reference to declarations or acts made or done to corrupt the fountains of justice—to procure persons to commit perjury. This was all that was decided, and nothing more. It is true that, in delivering the opinion of the learned judges, Chief Justice Abbott said, "We think the only effect of a subsequent discovery" (of the effort at subornation of perjury) "would be to allow the witness to be called back for further cross-examination, if still within reach." But this was not even a decision of the question as to whether in such case the witness could be of right called back for the purpose of further cross-examination. The question as to the existence of such right of recall and further cross-examination was not one of the questions propounded to the judges, and of course was not a matter decided by them. But even supposing their decision went to that length, still that is not this case. It might very well be that if the judge trying a cause should be satisfied by affidavits or otherwise that there was probable cause to believe that a witness who had been examined and cross-examined had been guilty of attempts at subornation, poisoning the very fountains of justice, he should order the recall of such witness for the purposes of giving him the opportunity to explain or to deny, and then in case of denial to allow his denial to be attacked. But that would be a very different thing from ordinary witnesses to remain for weeks, or it may be for months, hundreds of miles away from home, or to order them back after their return home, that they may be recalled for the mere purpose of laying the groundwork of their contradiction by other witnesses who might be hunted up.

We think the case of Queen Caroline is good law, so far as it decided the questions propounded by the House of Lords, and no further. It is not decisive of this present application. No person can read the opinion delivered by Chief Justice Abbott without discovering that it is very wide of the present case.

If the law were so well settled as the counsel for defendant in this case claim it to be, it is not a little surprising that the text-books are altogether silent on the subject, and that no adjudicated case has been produced in support of the proposition.

The rules upon this subject to which I have alluded, and such as I have always seen observed in any practice with which I am familiar, and in the absence of controlling authority or reason requiring they should be set aside, I prefer to adhere to them in this case, as I have in all other cases which have preceded it.

If counsel for the defence still believe they are right in the views which they have presented they are entitled to note an exception.

The defence noted an exception, and Mr. Merrick desired to file an affidavit bearing upon the same matter, but counsel for the prosecution objected, and the court said the affidavit should have been filed before the opinion was delivered.

J. T. MAY, physician—residence, Washington—sworn and examined.

By Assistant District Attorney WILSON:

Q. You are a practising physician and surgeon in Washington, and have been for many years past?

A. Yes, sir; for over thirty years.

Q. Were you acquainted with John Wilkes Booth?

A. I was.

Q. Were you his physician?

A. I cannot say that I was his physician. I was acquainted with him professionally, in this way: he came to my office, and desired to have an opinion about a tumor on his neck, which I advised him to have removed.

Q. State whether it was done.

A. I did remove it from his neck while he was filling an engagement here at one of the theatres.

Q. How was it done?

A. With a knife. I took it out.

Q. Will you describe the wound it left, and the appearance of the wound after it healed?

A. The tumor was on the back of his neck, a little to one side. I do not recollect whether it was on his right or his left side.

Mr. BRADLEY. I presume, your honor, it is understood that we except to the admission of any of this proof.

Mr. WILSON. We are examining Dr. May out of the regular order, simply as a matter of convenience.

Mr. BRADLEY. The question we raise is as to the admissibility of the evidence, not to the order in which it is given.

Mr. WILSON. Of course, it does not appear relevant now, but we will make it appear so before we close the case.

Q. Describe the appearance of the wound.

A. I was a little reluctant about removing this tumor, because he was playing an engagement here in the city, and I told him so; I told him that he was liable to have the wound torn open. He was very urgent to have it taken out, and promised to moderate himself in his playing if I would remove it. Finally I consented to take it out, on condition that he would be careful. The wound united very closely by what we called adhesion, or union by the first intention. He came to my office every day to have it dressed. Some days after the wound had united—perhaps four or five days—he called with the wound torn widely

open. He stated that in some part of the play of the evening before, Miss Cushman had struck him on the neck, and had torn the wound open. I will state that when a wound of that kind is once torn open, it has to unite by a different process than adhesion. It has to unite by a granulating process, which generally leaves considerable of a scar. It had left in his case a scar, such as I would have expected from a gap that had been made to fill up by granulation; whereas, if it had united by first intention, it would have left only a slight seam.

Q. Describe the appearance of the scar.

A. It was a scar of some width—such a scar as would not have been made by a surgical operation if the wound had united by adhesion, but it had been torn open by this blow. After being torn apart it left, when healed, a broad, ugly-looking scar, produced by the granulating process of which I have spoken, which is usually the case with wounds which unite the second time after being torn open.

Q. Was there any discoloration?

A. Yes, sir. At first it is of a red color, but in course of time the cicatrix becomes rather whiter and more dense.

Q. When was it, doctor, that you performed this operation?

A. I cannot tell exactly. It was some time before Mr. Lincoln was killed; I should say at least a year; perhaps longer than that. I cannot tell exactly, as I make no reference to it on my books.

Q. State when and where you last saw the body of Booth.

A. The last time I saw the body was on board the monitor, at the navy yard. I cannot specify the day. It was some days after he was reported to have been killed; a day or two, perhaps, after that.

Q. You identified the body?

A. I did.

Q. Did you observe this scar?

A. I observed a scar on the neck. In fact, I told the Surgeon General where the scar was, and what its appearance was, before I examined it.

Q. State how long before the assassination it was that you performed this operation.

A. I cannot. It was certainly a year; it may have been a year and a half. I cannot give the precise time, because I made no entry. He was playing an engagement with Charlotte Cushman at the time. She was a strong, powerful woman, and either in embracing him, in some part of the play, or in repulsing him, I do not know which, she tore this wound open, which caused this bad-looking scar to be left.

Q. You do not remember which side of the neck it was?

A. I do not. I never made any note of it.

JOHN GREENAWALT—residence, Philadelphia, Pa.—sworn and examined.

By Mr. PIERREPONT:

Q. Where do you now live?

A. In Philadelphia, 200 Church street.

Q. What is your occupation?

A. I am in the hotel business.

Q. Did you keep hotel in the city of Washington at any time?

A. I did.

Q. Please state from what time to what time.

A. It was from '64 to '66.

Q. What was the name of the house?

A. The Pennsylvania House.

Q. Where was it situated?

A. On C street, between Four-and-a-half and Sixth.

Q. Did you see during that time John Wilkes Booth at your house?

A. I did.
Q. How often?
A. I could not state the number of times, but it was frequently.
Q Did you see any other person there that he came to see? and if so, state who he was.
A. He came to see Atzerodt.
Q. Did he live there?
A. He stopped with me during that time.
Q. Boarded with you?
A. Yes, sir.
Q. Do you know the number of the room he occupied?
A. Number 51.
Mr. BRADLEY. Who occupied that room?
WITNESS. Atzerodt.
Q. Did you see Herold there?
A. I did.
Q. Will you state who was your clerk, or bookkeeper, at that time?
A. Samuel McAllister.
(The prisoner was here directed to stand up, in order that he might be seen by the witness. He did so.)
Q. Have you ever seen the prisoner before?
A. I have.
Q. Where?
A. In my house, the Pennsylvania House.
Q. State who was boarding with you then.
A I could not state the time that I saw him there.
Q. Who did you see him there with?
A. I could not say that.
Q. Can you state about when you saw him there?
A. I remember his face, and that is all.
Q. What did Booth do there?
Mr. BRADLEY. I object to any further examination on that branch. I suppose it comes within the ruling of your honor, but I desire to have an exception noted. I submit that the witness, having stated he had seen Surratt, but is unable to state when, with whom, or how, any further examination as to the parties at that time is not proper.
Mr. PIERREPONT. It will be when we get McAllister here.
Mr. BRADLEY. That may be; but he is not upon the stand at present. I do not want this testimony to go in *sub silentio*, under the impression that it may be made evidence hereafter.
Q. Will you state what occurred at your house? I mean between these parties.
A. Well, Booth called frequently on Atzerodt, and always held his conversations with him privately. He generally called him out of the house or into the hall. Atzerodt generally followed him out. They sometimes held conversation in front of my house On several occasions on which I have walked to the door with them, they have left the front of my house and walked down towards the National Hotel, and stood there.
Q. As you walked to the door?
A. Yes, sir.
Q. Do you remember on one particular occasion of a meeting there?
Mr. BRADLEY. What sort of a meeting?
Mr. PIERREPONT. A meeting of persons from any place.
WITNESS. I remember of a number of gentlemen meeting Atzerodt in the house.
Q. Where from?

A. I could not state where they were from. They were strangers to me. They were drinking frequently there, and asked me to take a drink.

Q. Who asked you to take a drink?

A. Atzerodt.

Q. What did he say?

A. After we had taken a drink he said he hadn't much money, but he always had friends enough to give him as much as would see him through. He expected to leave some of these days, remain away some time, and then return with as much gold as would keep him all his life.

Q. About what time was that said?

A. That must have been about two or three weeks before the assassination. I could not state the date.

Mr. PIERREPONT. We know when the assassination was, and you say it was about two or three weeks before that.

Q. Do you remember any occurrence on the 18th of March, at your house, prior to the assassination?

A. I think he came to my house about that time.

Q. State whether his stoppings there were long or short.

A. He then stopped until about the first of April, I think.

Q. On the Wednesday prior to the assassination, what occurred, if anything?

A. He left my house on Wednesday morning. He said to me: "Mr. Greenawalt, I am going away to stay a few days. I owe you a small bill. Does it make any difference whether I pay you now, or when I return?" I told him it did not make any difference.

Q. Do you know anything about a one-eyed horse of his?

A. Yes, sir.

Q. State about it.

A. I bought a horse of him, and came very near buying that one. It was a one-eyed horse.

Q. Did you see this one-eyed horse of Atzerodt's after the murder?

A. Yes, sir.

Q. How long after?

A. It was on the morning of the 15th.

Q. Where did you see the horse?

A. At the Provost Marshal General's office on Fourteenth street.

Q. On the night of the murder, did you see Atzerodt?

A. I did.

Q. State about that.

A. I saw him about fifteen or twenty minutes past two o'clock on the 15th.

Q. On the night of the 14th and morning of the 15th?

A. Yes, sir.

Q. About what hour?

A. About fifteen or twenty minutes past two o'clock.

Q Tell where you saw him, and what occurred.

A. I had just returned to my house and gone to my room when the servant man came up and stated that Atzerodt and some gentleman had come in, and that the stranger wished lodgings and wished to pay for it. He thereupon handed me a $5 bill to take pay for the lodgings out of. I had not retired, and so I went down to the office myself. The stranger was standing at the register, and Atzerodt was lying on the settee, in the front room. I asked the gentleman what he wished. He said he wished lodgings, so I gave him the change, and had him shown to his room. He gave his name as Samuel Thomas. Atzerodt then asked for his old room. I told him it was occupied; that he would have to go in the room with this stranger. It was a large room, with six beds in it. There were other parties in it before these parties went there. He then followed to go to the room. I said to him: "You have not registered." He said: "No;

do you wish me to?" I said: "Certainly." He turned round, hesitated some, but finally walked forward and registered, and then walked to his room. That is the last I saw of him.

Q. Describe the man who was with him.

A. He was a man of from five feet six to six and one half inches in height, and weighed from 140 to 150 pounds.

Q. Describe his face, as nearly as you can, and his dress and beard.

A. His face was rather slender. He had dark hair, and a dark beard. He had on a broadcloth suit. The back portion of his pants were all worn through. I discovered that as he passed the door.

Q. After Atzerodt went to the room that night, did you ever see him again?

A. Yes, sir; I saw him at his trial.

Q. Do you know whether anybody left your house that morning for the train? and if so, what train?

A. There was a lady who wished to leave in the six o'clock train, and I gave orders to have a carriage there to take her away. A servant had gone and got it, and met Atzerodt on his return; that was five o'clock, or a little before. He was walking towards Sixth street, on C.

Q. Do you know what the condition of the night was at five o'clock, as to whether it was dark or not?

A. I do not.

Q. Did this lady return to your house after she went to this train, at this hour?

A. No, sir.

Q. Had Atzerodt any baggage there?

A. He had not.

Q. Did the other man bring any baggage?

A. No, sir.

Q. Did he pay his bill?

A. No, sir.

Q. Has he ever paid it?

A. No, sir.

Q. Did he show you any arms at any time? and if so, what, and when?

A. He had left a revolver in the office in charge of the clerk.

Q. Did you have any conversation with him about it?

A. I did.

Q. What was it?

A. He had shown it to me and told me he had just bought it. I then asked him what he paid for it? I told him that I did not know he wanted one; and wished I had, as I had one that I had no use for.

Q. Was this a new one?

A. Yes, sir.

Q. State what peculiar money, if any, Atzerodt brought you.

A. Not any that I know of.

Q. I do not mean peculiar always, but at that time. Did he bring you gold?

A. No, sir.

Mr. PIERREPONT. O, yes, I remember; it was another man who brought you gold.

Q. Do you know whether the man who called his name Thomas had ever been there before?

A. No, sir; not that I know of.

Q. Did he say anything to you?

Mr. BRADLEY. Who?

Mr. PIERREPONT. I mean the man who called himself Thomas.

Mr. BRADLEY. Is that admissible?

The COURT. I cannot see the applicability of that testimony.

(Question withdrawn.)
Q. Have you seen this man Thomas since?
A. I have not.

Cross-examination:

By Mr. BRADLEY:

Mr. BRADLEY: May it please your honor, in entering upon a cross-examination of this witness, we do not wish to be understood as waiving the benefit of any exception that we have taken.

Q. Did not the Prince George's county and the Charles county stage start from your house?
A. Yes, sir.
Q. During all that time?
A. Yes, sir.
Q. A great many passengers going to and from there came to your house?
A Yes, sir.
Q. You saw Mr. Surratt meeting and talking with people who came and went away?
A. Well, I cannot say anything in regard to that. I remember his face—that is all.
Q The stage that I refer to is the one that goes down to Surrattsville, "T B," and Leonardtown and Port Tobacco?
A. Yes, sir; I understand.

By Mr. MERRICK:

Q. The stage office is at your house isn't it?
A. Yes, sir.
Q. For those places on the road?
A. Yes, sir.

By Mr. PIERREPONT:

Q. Did the stage that went to Surratt's tavern start at the same time with the stage that went to Port Tobacco?
A. Yes, sir.
Q And at what time?
Mr. MERRICK. It was the same stage wasn't it?
A. No, sir.
Q. At what time did it start?
A. It started at 8 o'clock.
Q. In going that way?
A. Yes, sir.
Q. And at what time did it return.
A. It returned between 5 and 6 generally.
Q. The Port Tobacco stage and the Surrattsville stage were, I understand you to say, different stages?
A. Yes, sir. It was the same line, although there were two stages. They run to "T B," on the same road, and there they took different roads.
Mr. BRADLEY. That is, "T B" is beyond Surrattsville; and they run by Surrattsville on the same route?
A. Yes, sir.
Q. Passengers came and went by both stages as far as Surrattsville?
A. Yes, sir.
Mr. BRADLEY. I forgot to ask one question. You said that you saw Atzerodt on the 15th, after 5 o'clock in the morning. Can you state whether it was near about the time of the departure of the morning train—6.15?
A. No, sir. I wish to correct that. I did not see him after 2 o'clock. It was my servant who saw him at that time. You will find it so in print.

By Mr. PIERREPONT:

Q. After you last saw him, what did you do?

A. I retired after that—went to bed.

Q. When did you get up?

A. About 6 o'clock.

Q. You were asked about this man Thomas. Did you see him after you went to bed?

A. No, sir.

Q. Did you see him on the trial of the conspirators, or a person who, you thought, resembles him very strongly?

A. I did not.

Q. Do you recollect saying on the occasion of the conspiracy trial that "he (pointing to Spangler) resembles him somewhat, but he is not so dark, and has not the beard that Thomas had"?

A. No, sir. He did not have a beard.

JOHN M. LLOYD—residence, Washington—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. On the Island, Washington city.

Q. How long have you been residing in the city?

A. I think I moved up from the country in October, 1865.

Q. Where had you been living previous to that?

A. I had been living at Surrattsville for a short time.

Q. You are a native of this city?

A. With the exception of an intermission of three years, I have been residing here for the past fifteen or twenty years.

Q. I believe you were a witness before the conspiracy trial, were you not?

A. Yes, sir; unfortunately.

Q. Will you state where you lived in the year 1865?

A. I moved to Surrattsville about the last of December, 1864. I resided at Surrattsville up to October, 1865.

Q. How far is that from this city?

A. I have always been told that it was about ten miles from the bridge.

Q. It is in Prince George's county, Maryland?

A. Yes, sir.

Q. Whose house did you occupy?

A. That of Mrs. Surratt.

Q. Mary E. Surratt?

A. Yes, sir.

Q. You saw her before the conspiracy trial?

A. Yes, sir.

Q. What was your business there?

A. That of hotel-keeping and farming.

Q. You kept the hotel at Surrattsville in Mrs. Surratt's house, and engaged in farming at the same time?

A. Yes, sir.

Q. State if you know the prisoner at the bar, John H. Surratt.

A. I do not see him. (Turning his eyes in the direction of the prisoner.) I believe that is Mr. Surratt.

(The prisoner was here requested to stand up. The witness then said:)

A. That is him; I know him; I had a short acquaintance with him.

Q. And you now recognize him?

A. Yes, sir.

Q. You knew Mrs. Mary E. Surratt?

A. Yes, sir; my acquaintance with them was very short the whole time.

Q. Did you rent this house of her?

A. Yes, sir.

Q. Did you know one David E. Herold?

A. I knew David E. Herold; he was at my house on several occasions; I first saw him, I think, at Mr. Birch's sale.

Q. You saw him several times afterwards?

A. Yes, sir.

Q. Did you see him at the conspiracy trial?

A. I did.

Q. Did you know one George A. Atzerodt?

A. I never knew him by that name until two weeks before the assassination; I used to call him by the name of Israel.

Q. By what name did the prisoner call him?

A. Well, he came in there one morning with him, and laughingly stated something about somebody calling him "Port" Tobacco; that is the only time I ever heard the name made use of.

Q. Did you see him at the conspiracy trial?

A. Yes, sir.

Q. I will ask you if you ever saw David E. Herold, George A. Atzerodt, and the prisoner at the bar in company together?

A. One morning, probably about five or six weeks before the assassination, Surratt and Atzerodt came to my house; Herold had been there the night before, and said that he was obliged to go to "T B" that night; he stopped in there, and was playing cards; he played several games; the next morning Surratt and Atzerodt drove up.

Q. You saw the three then at your house at that time?

A. Not until after that.

Q. When?

A. About half an hour after that; Surratt and Atzerodt left and went down the road, and I supposed in the direction of "T B;" they all three returned together, Atzerodt, Herold, and Surratt.

Q. Now we have them all three at your house; state what they did.

A. There were several other persons besides them there at the time. I therefore paid no particular attention to them. They came in and took a drink, probably, and were playing cards, as well as I remember. After awhile Surratt called me into the front parlor, and said he wanted to speak to me. There I saw lying on the sofa what I supposed to be guns. They had covers on them. Besides these there were two or three other articles.

Q. State what the other articles were.

A. One was a rope—a bundle of rope as big around, I suppose, as my hat, (a black felt hat of ordinary size.) It was coiled rope. I should think from the size of the bundle that there was not more than 18 or 20 feet in it. I took it to be an inch and a quarter rope.

Q. What other articles do you think of?

A. There was a monkey-wrench.

Q. If you saw those things again would you be able to identify them?

A. I cannot say that I could.

Q. State what the prisoner said to you about those things after he had shown them to you.

A. He wished me to receive those things and to conceal the guns. I objected to it, and told him I did not wish to have such things in the house at all. He assured me positively that there should be no danger from them. I still persisted in refusing to receive them, but finally, by assuring me most positively that there would be no danger in taking them, he induced me to receive them. He did not say what sort of guns they were, as well as I remember.

Q. State what you did after you consented to receive and conceal them.

A. I told him there was no place about the premises to conceal such things at all, and that I did not wish to have them there. He told me then of a place where he knew it could be done. He then carried me up into a back room from the storeroom.

Q. Had you ever been in that room before?

A. Never. I supposed the place was finally closed up. I did not know that there was anything kept there at all. I tried on several occasions to get in there to have it occupied for a servant's room, for persons passing backwards and forwards very frequently stopped there in the winter with servants, and I had no place to put them, but had to let them lie down stairs on my lounge.

Q. After you and the prisoner went into this room with these articles, state what you did.

A. I put them in an opening between the joists of the second story of the main building.

Q. Do you recollect of any other articles that you have omitted that he brought to you at that time?

A. Nothing more was brought at that time.

Q State whether or not there was any ammunition brought there.

A. There was a cartridge-box brought there. Whether it was full of ammunition or not, I am not able to say.

Q. Did you examine it to see whether or not there was any in it?

A. No, sir. I did not examine anything at all.

Q. Did you conceal that with the guns?

A. Yes, sir; that was put with the guns.

Q. What did you do with the rope and the monkey-wrench?

A. I left the monkey-wrench and rope at Surrattsville when I moved away. What has become of them I cannot say.

Q. What part of that building did you deposit these articles in?

A. I deposited them in the storeroom.

Q. Explain that.

A. The storeroom is a place where we kept barrels of liquor and such like.

Q. It was not the same place where the guns were put?

A. No, sir.

Q. State how long Surratt wanted you to keep these articles.

A. He told me that he only wanted me to keep them two or three days, and that he would take them away at the end of that time. On that condition I consented, and that alone.

Q. Did anything else pass between you and the prisoner at that time?

A. Nothing more, as far as I remember.

Q. What afterwards happened between these parties?

A. I do not know of anything particular happening after that, except that they engaged in playing cards.

Q. How long did they stay at your house playing cards after those things had been concealed?

A. I do not remember distinctly, but probably half an hour.

Q. What did they then do?

A. They left.

Q. Did they leave in company with each other?

A. That I cannot say; I did not see them when they left. They all went out on the porch together, as well as I remember.

Q. When was the next time you saw the prisoner?

A. I think I met him two or three days after that, going down to Surrattsville, and I supposed at the time that he was going to take those things away; and I said nothing to him about them.

Q. Did you have any conversation with him at all?

A. Nothing more than that he asked me if he could get his breakfast down there. I told him I thought so—some ham and eggs. I was on my way to Washington when I met him. He got his breakfast there, I think.

Q. Did you see him any more after that?

A. I saw Surratt again after that, as well as I remember, on the 25th of March.

Q. Did you see him again before the assassination?

A. I met him about a week after that on the stage about four or five miles this side of Surrattsville, returning to Washington, while I was returning home. He was on the stage and I was in my buggy.

Q. Did you ever see him any more?

A. No, sir; not until now.

Q. Did you see Atzerodt after this interview that you have described?

A. I saw Atzerodt, I think, once after that.

Q. Where was that?

A. I met him about at the Selbyville post office. That is, I met him twice that day. I met him once on the Navy Yard, and in the evening while he was coming on.

Q. Did you ever see them all in company together after that?

A. No, sir. I think that was the only time I ever saw them all in company, that I remember of.

Q. You have stated that you knew Mrs. Surratt and rented this house from her. I will ask if you saw her shortly before the assassination of the President; and if so, when and where you saw her?

WITNESS. I do not wish to go into the examination of Mrs. Surratt, as she is not here to answer before this tribunal.

The DISTRICT ATTORNEY. The court will tell you whether the question is a proper one or not. You will answer the question if you please.

WITNESS. I cannot, Mr. Carrington, unless the court compels me.

The DISTRICT ATTORNEY. Very well; the court will say whether it is a proper question.

The COURT. What is the question?

The DISTRICT ATTORNEY. I asked him if he saw Mrs. Surratt, the person of whom he rented this house, shortly before the assassination of the President. If so, when and where it was that he saw her.

The COURT. (To the witness,) You will have to answer the question.

The DISTRICT ATTORNEY. I will repeat it. Did you see Mrs. Surratt, the lady of whom you rented this house at Surrattsville, shortly before the assassination of the President?

A. I met her on two occasions.

Q. State where it was the first time?

A. The first time I saw her was in Uniontown. I think it was the Tuesday previous.

Q. Previous to the assassination?

A. Yes, sir.

Q. State in whose company she was?

A. She was in company with a young man whose name I did not know. Since that time, however, I have discovered his name to be Weichmann.

Q. Where was she standing or sitting?

A. She was sitting in the buggy alongside of Mr. Weichmann, in one of these high narrow buggies.

Q. State if you had any conversation with her; and if so, state what was said by you both at that time?

Mr. BRADLEY. Tuesday or Friday?

The DISTRICT ATTORNEY. I am referring to Tuesday.

The COURT. What day of the month?

The DISTRICT ATTORNEY. The Tuesday before the assassination, is the way the witness fixes it in his mind.

WITNESS. She made use of a remark to me—called my attention to something that I couldn't understand.

Mr. MERRICK. Who did?

WITNESS. Mrs. Surratt.

Mr. MERRICK. Just state what was said, or the substance of it, not your understanding of what was said, or your failure to understand what was said.

WITNESS. I do not wish to state one solitary word more than I am compelled to.

Mr. MERRICK. That does not make any difference.

The DISTRICT ATTORNEY. I suppose you do not, but it is your duty to state what you know about this matter.

The COURT. State what was said, as far as you recollect, whether you understood it or not.

WITNESS. She tried to draw my attention to something.

Mr. MERRICK. No matter what she tried to do. State what she did say and did do.

WITNESS. She finally came out and asked me about some shooting irons that were there.

Q. Where?

A. At Surrattsville, as I supposed.

Mr. MERRICK. She did not say that?

WITNESS. No, sir.

The DISTRICT ATTORNEY. You have been cautioned several times not to state any inference that you drew from the conversations. You are not expected to give the precise words, but the substance of the conversation as near as you can recollect it.

WITNESS. Well, really——

The DISTRICT ATTORNEY. You have already testified about this matter?

WITNESS. I have.

The DISTRICT ATTORNEY. Well, now state what was said.

WITNESS I cannot do it unless I do it in my own way. It is out of the question.

Mr. MERRICK. In your own way, of course, but only state what you recollect she said, not your impressions.

The COURT. Give the substance of what you recollect she said. We do not expect you to be able to recollect the exact words.

WITNESS. As well as I recollect, in speaking of the shooting irons, she told me to have them ready; that they would be called for, or wanted, soon, I forgot now which. Either expression sounded to me as if it amounted to the same thing, for I was satisfied.

Mr. MERRICK. No matter what you were satisfied about.

WITNESS. I desire to state my reasons.

The DISTRICT ATTORNEY. We do not care about your reasons.

Q. Now state what you said to her?

A. When she made this remark, I told her that I was very uneasy about those things being there; that I had understood the house was going to be searched, and I did not want to have those things there; that I had a great notion to have them taken out and buried, or done something with.

Q. What did she say then?

A. The conversation then dropped on that, and turned on John Surratt. I told her I had understood that the soldiers were after John to arrest him for going to Richmond. I had understood that he had gone there. She laughed very heartily at the idea of anybody going to Richmond and back again in six days, and remarked that he must be a very smart man indeed to do it.

Q. Anything more?

A. That was about the substance of the conversation that passed between Mrs. Surratt and myself at that interview. It did not last longer than between five and ten minutes.

Q. Did you see her any more from that time until the 14th of April, the day of the assassination?

A. She was there on the evening of the Friday of the assassination, I think.

Q. Not before?

A. I do not know how long before that, but not any day before it.

Q. Not between Tuesday and Friday?

A. No, sir.

Q. I will ask you where you were on the 14th of April, 1865?

A. I was in Marlboro', attending the trial of a man who had stabbed me.

Q. You were a witness?

A. Yes, sir.

Q. What time did you return home?

A. I staid in Marlboro' for some time after the trial was over, drinking and playing cards. I didn't leave there until pretty late; I suppose it was five or six o'clock, may-be later, when I got home. I do not remember distinctly, but it appears to me in the confused memory I have of it, that the sun was not more than half an hour high when I got home. It did not appear to me so.

Q. What persons did you find at home when you got there?

A. I found a good many gentlemen there—I suppose some ten or twelve. I saw there, among others, Mrs. Surratt and this man Weichman.

Q. State if you then had any conversation with Mrs. Surratt; and if so, on what part of your premises, and what that conversation was.

A. When I drove up in my buggy to the back yard, Mrs. Surratt came out to meet me. She handed me a package, and told me, as well as I remember, to get the guns, or those things—I really forget now which, though my impression is that "guns" was the expression she made use of—and a couple of bottles of whiskey, and give them to whoever should call for them that night.

Q. What did you say to her?

A. I do not know that I made any reply to her at all. I was in liquor at the time, and being so, I did not want to have any conversation with her.

Q. How long did she stay there after this?

A. I do not remember. I went into my back room and threw myself on the lounge, when I immediately turned sick from the effect of the liquor. As I was raising up she came in and told me that her buggy spring was broken, and that I must do something to mend it. I told her, as well as I remember, that I had nothing to do it with, only to tie it with some rope yarn that I had.

Q. Do you recollect what time that was?

A. That was late in the evening after I got home.

Q. Before dark?

A. Yes, sir.

Q. After you fixed up her buggy for her, how long did she stay?

A. She and Weichman got in then and drove off.

Q. You speak of a package which she showed you at that time. What was it?

A. I did not notice the package until probably an hour later or more.

Q. When did you notice it?

A. I thought of it and carried it up stairs, and it feeling rather light, my curiosity led me to open it to see what it contained. I read in printed letters on the front-piece of it, "field glass." These letters were on a small part of it.

Q. Do you think you would know it if you were to see it?

A. I do not know that I should.

Q. You discovered that about an hour afterwards: what disposition did you make of it at that time?

A. I put it with the other things.

Q. You mean with the gun and cartridge-box?

A. Yes, sir.

Q. Do you recollect of any of these parties to whom I have called your attention—Surratt, Atzerodt, or Herold—coming to your house that night, after this interview?

A. Herold was there about 12 o'clock that night.

Q. The same person who was at your house on Tuesday?

A. Yes, sir.

Q. Who was in company with him at that time?

A. I do not know.

Q. Describe the man as well as you can, and whether there was anything the matter with him that attracted your attention?

A. The man—he was on horseback—looked to me to be about the size of Mr. Wilson, the assistant district attorney, with a big, heavy moustache. His moustache was the only thing noticeable about him, as far as I remember. He was on a large horse.

Q. Did he dismount?

A. No, sir.

Q. Do you know whether anything was the matter with him—whether he complained of anything?

Mr. BRADLEY. That is asking the witness to state what the man said, is it not?

Mr. PIERREPONT. Yes, sir. Whatever he said and did we offer in evidence.

The DISTRICT ATTORNEY. We consider all the declarations of these parties evidence, and if that is so, certainly what a man says in reference to a complaint is.

The COURT. All declarations of the conspirators are evidence. The first inquiry, however, to be instituted is as to whether he was one of the conspirators.

The DISTRICT ATTORNEY. We expect to show he was.

Mr. PIERREPONT. We expect, your honor, in a few minutes, to show that it was Booth.

The COURT. If you do not do that the evidence will be ruled out.

Mr. PIERREPONT. Of course, your honor.

Mr. BRADLEY. The effect will have gone to the jury.

The COURT. In order to avoid any effect of that sort, suppose you stop the examination on this point, just here, and proceed to introduce your proof as to its being Booth.

Mr. PIERREPONT. Very well, sir; we will accept of the suggestion of your honor, and stop the examination on this point here, and after we have made the proof to which we have referred call him back.

The COURT. That will be the better way.

Q. State what Herold said about that time.

A. Herold said when he came into the house—when I opened the door—"Mr Lloyd, for God's sake make haste and get those things." He did not name what things they were.

Q. When he said that what did you do?

A I went up stairs and got them.

Q. What things?

A. I got one of the guns, the field-glass, and the cartridge-box, which was all I could bring down at that time, and I did not go back any more.

Q. To whom did you give those things?

A. To Herold.

Q. Did you offer anything to the other person?

A. I do not think I did. I do not know whether the other person took anything or not. If he took anything at all, it was nothing more than a field-glass.

Q. State what occurred after that; what further Herold said to you.

A. I do not remember of Herold saying anything particularly. He took the things and rode towards the stable. On his return he got between the other man and myself, and then they both rode off down the road. Herold did not stop at all when he returned, I think.

Q. Did Herold say anything to you in addition to what you have already stated?

A. I do not think he did.

Q. Did he say anything as to what he or anyone else had done that night?

A. I do not think he did. I do not remember of having any conversation with Herold at all.

Mr. BRADLEY. I thinkthat is going about far enough on a direct examination.

Q. How about the whiskey? Did you give them anything to drink?

A. I think Herold called for something to drink. I said two bottles, as well as I remember, but in reality I do not know exactly which bottle he drank out of. I was under the impression that it was the bottle I had filled for him.

Q. Did he drink?

A. I suppose he did. The man talked as if he was drunk; he was drunk, in fact.

Q. What became of this bottle of whiskey?

A. There was no whiskey taken away in a bottle. The bottle of whiskey he took out was returned.

Q. Will you describe the kind of horses these persons were riding?

A. I only had a casual view of the horses. One of them I took to be a gray horse, and the other a bay. The largest horse was a light-colored horse. I cannot say for a certainty whether it was gray, or what color. It looked more like a white horse than a gray.

Q. Did you know at that time of the assassination of the President, or had you heard anything of it?

Mr. BRADLEY. Never mind what he heard at all.

The DISTRICT ATTORNEY. When did you first hear of it? That would be evidence.

Mr. BRADLEY. If the court please, I see the drift of the question. He wants to get at what the other man who was with Herold said.

The COURT. He will do that by-and-by, when he gets it in the proper shape for that purpose.

Mr. BRADLEY. Yes, sir; it is very nicely shaped now, but not quite sharp enough.

The COURT. I have told the district attorney he could not do it in this shape.

The DISTRICT ATTORNEY. I asked the witness if he heard of the assassination of the President at that time, or if he heard it at all.

The COURT. You can ask the witness if he had up to that time heard of the assassination of the President.

The DISTRICT ATTORNEY. Or heard of it afterwards; and if so, when?

The COURT. No. I do not see how what he learned afterwards could have any bearing upon this examination. If Herold said anything at that time, of course it would be evidence.

Mr. PIERREPONT. I suppose there cannot be any doubt as to the rule of law that whatever was said to the witness at this time in Herold's presence can be given in evidence, as also the description of the man that he there saw on the horse, as well as his condition; and that we can prove his name by another witness.

The COURT. Herold being one of the conspirators, whatever was said in his presence and his hearing is evidence. If the witness can state that this conversation took place within ear-shot of Herold, it will be evidence.

Mr. BRADLEY. Let them first lay the foundation as to whether he was within car-shot.

WITNESS. I will state that at the time this man was speaking to me as to what had been done Herold was across the road. That is, as far as my memory serves me, I think he was.

The DISTRICT ATTORNEY. At the time he was speaking of himself—complaining of having something the matter with him—was Herold present, or in such a position that he could hear what he said?

WITNESS. I believe Herold was present when he told me his leg was broken.

Mr. BRADLEY. Has that anything to do with Herold?

Mr. PIERREPONT. Yes, sir; it has.

The COURT. The whole conversation, I presume, is evidence.

Mr. PIERREPONT. In the presence of Herold he said his leg was broken. What further did he say after saying that?

The COURT. In Herold's presence and hearing.

Mr. BRADLEY. The court will rule whether he can go on and state what passed.

The COURT. I have ruled that whatever Herold said is evidence, and that whatever the other person said, when Herold was near enough to hear it, is also evidence.

By Mr. PIERREPONT:

Q. What did he say about his leg being broken, or anything else?

The COURT. In Herold's presence and hearing.

WITNESS. He asked me if there were any doctors in that neighborhood. I told him only one that I knew of, Dr. Hoxton, about a half mile from there, but that he did not practice. He told me so himself. He said he must try and find one somewhere.

Q. Did he say anything about taking any gun?

A. He was opposed to taking any gun: and opposed to Herold taking one.

Q. Why?

A. Because his leg was broken.

Q. Did he, or Herold, mention his name at that time?

A. No, sir; there was no name given at all.

Q. Did you have a good look at the man?

A. I was close to him, but did not pay particular attention to him. He appeared to me as if he was drunk.

Q. You have never seen him since?

A. No, sir.

Q. What did he say?

A. That is about the substance of what he said. The conversation did not last over five minutes.

Q. Did he say anything about Secretary Seward?

Mr. MERRICK. The witness has been asked a dozen times to state all that was said in Herold's presence and hearing.

Mr. PIERREPONT. I know that. He says he doesn't recollect any more than he has stated, but now I am directing his attention to a particular matter.

Mr. BRADLEY. The witness has just said that when the other conversation took place Herold was across the road; am I right, Mr. Lloyd?

WITNESS. When the conversation passed as to what was done towards the President, Herold was across the road.

The COURT. Was he or was he not within hearing distance?

WITNESS. He was over at the stable, and he could not have heard from there. The distance was as great as from here (witness stand) to the far end of the wall there, (south wall.)

The COURT. So far that he could not have heard?

WITNESS. Yes, sir.

Q. Have you been examined before on this subject?

A. Mr. Carrington examined me.

Q. Have you been examined before any other tribunal?

A. I was before the military commission.

Q. You were examined there, were you not?

A. Yes, sir.

Q. When Herold was there talking with you, what did this man who said his leg was broken say, further than what you have already stated?

A. I do not remember that he said anything else. He may have done so, but if he did it has escaped my memory, except that portion that I was going to tell awhile ago, but was stopped.

Q. You were going to tell something else?

A. Yes, sir. I suppose it will come out hereafter.

Q. You were going to tell something else that the man with the broken leg said, were you?

A. Yes, sir.

Q. What was the condition of the moon at that time?

A. The moon was up, but it appeared to me as if it had not been up very long.

Q. When did you first hear of the assassination?

Mr. BRADLEY. If it was during this conversation, I object.

Mr. PIERREPONT. If your honor please, this is important and legitimate in many respects. It is important and legitimate in relation to this meeting, and the conversation of these persons. It is important in every light that can possibly be conceived of, that the witness shall state when he first heard of the assassination. It is important as fixing an event which he saw. It is important as fixing an incident which occurred. I submit that if this man at this time heard from anybody, or from any source, of the assassination, it is evidence proper to be given.

Mr. BRADLEY. We have not a word to say in reply. We leave it with the court to decide.

The COURT. He can state when he first heard of the assassination of President Lincoln, but he cannot say whether or not the person whom he did not know, and who has not yet been identified as one of the conspirators, told him of it.

Mr. PIERREPONT. My question is not that. It is, "When did you first hear of the assassination?"

WITNESS. I cannot answer that question until this other is settled.

Mr. PIERREPONT. Can't you?

WITNESS. No, sir.

Mr. PIERREPONT. You cannot say whether you heard of it a week afterwards, the day before, or that night?

A. It might be the second time.

Mr. PIERREPONT. My question is not as to the second time. I ask you on your oath to state when you first heard of this assassination.

WITNESS. If I answer that question, it will come exactly in contact, in my opinion, with what has already been prohibited by the court.

The COURT. You can answer when you heard it; but you cannot say who gave it to you, unless it was given to you by somebody who was known as one of the conspirators.

Mr. PIERREPONT. I now ask you when you heard it?

WITNESS. On that ground, then, I cannot answer. (Laughter.)

Mr. PIERREPONT. I did not ask you who stated it. I ask you when you first heard it?

WITNESS That is the question I am to answer. I cannot answer it.

The COURT. You must answer that question as to when you first heard the news of the assassination.

WITNESS. I first heard it that night.

Q. Were they then both before your house?

A. One was there. I do not know that both were. Herold, I think, was across at the stable.

Q. That is the time you heard it?

A. Yes, sir.

Q. You think the man with a broken leg was too far from Herold to have Herold hear him?

A. I do.

Q. Could he see him?

A. Yes, sir. There was nothing intervening between

Q. You were close to the man with a broken leg?

A. Yes, sir.

Q. Now tell us what he said about the assassination

Mr. BRADLEY. Is that evidence?

Mr. PIERREPONT. I submit that what was told the witness, whether he knew the name of his informant or not, is proper evidence in the case. My question is as to what the man with the broken leg on the horse told him. If he told him he committed the assassination, it is evidence beyond all question.

The COURT. Is there any objection to it?

Mr. BRADLEY. Certainly, if your honor please, unless it is proved that the man in question was connected with this conspiracy.

Mr. PIERREPONT. We have proved Herold to be connected with the conspiracy.

The COURT. I do not think anything could draw him in any nearer connection with the conspiracy than a declaration that he committed the act, if he did say so.

Mr. PIERREPONT. I should think not.

Mr. BRADLEY. We have nothing to say.

Mr. PIERREPONT. Will you please state what he said and what he did?

WITNESS. He did not tell me directly what he did himself. The expression he made use of, as well as I remember, was that "he" or "they" had killed the President. I did not understand which it was, "he" or "they."

Q. Did he say anything about any other man?

A. Not a word.

Q. I mean as regards any other person being assassinated?

A. I am not certain; but I think it is possible that he might have made use of Secretary Seward's name.

Q. What is your best recollection?

A. I think it was him who spoke of it, but I will not be altogether certain about it.

Q. By what familiar or nick-name did you hear Atzerodt called?

A. I never heard him called very familiarly by any name, except on one occasion, when Surratt told me that some ladies had dubbed him "Port Tobacco."

Q. It was Surratt you heard call him that?

A. Yes, sir.

Q. Was Herold present then?

A. No, sir.

Q. When the carbines were brought in were they covered?

A. Yes, sir.

Q. With what kind of covers?

A. As well as I remember they had gray cloth covers on, or gray woollen stuff.

Q. Did you take the cover off from one?

A. No, sir.

Q. Did you see it taken off?

A. I saw Herold take it off.

Q. Were you attracted by anything peculiar about the gun or the breech of it?

A. It appeared to me that it had something like a spring. I never saw a carbine or that kind of a gun before.

Q. You looked at that?

A. That just attracted my attention as he uncovered it in my presence.

[Witness was requested to retire from the stand for a few moments, in order that another witness, in whose custody these various articles were, might be called and the articles produced.]

EDWARD D. TOWNSEND, major general United States army—residence in Washington—sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. State your official position, if you please.

A. I am assistant adjutant general of the army.

Q. Will you please produce a field-glass and a pin placed in your custody?

A. The glass I hold in my hand; the pin I have in this paper. (unfolding the same as he spoke.)

Q. State from whom you received them both, and when.

A. I received these articles as the assistant adjutant general, in charge of the Adjutant General's department, from General Eckert, Assistant Secretary of War, as he was about retiring from office. It was on the 6th of August, 1866.

Q. They have been in your possession and custody since that time?

A. The glass was given over, at the request of counsel, to Colonel Conger for two or three days. With that exception they have both been in my possession since that time. I gave the glass to Colonel Conger on the 13th of June.

By Mr. PIERREPONT:

Q. Is this the same glass you gave to him?

A. It is.

By Mr. BRADLEY:

Q. Who is Colonel Conger?

A. I do not know who he is.

Q. Does he not belong to your corps?

A. No, sir.

Q. Is he in the military service?

A. No, sir; he is not in the army.

Q. You received both the glass and the pin at the same time?

A. Yes, sir.

Q. Do you know Colonel Conger personally?

A. I know him personally—by sight.

Q. You do not know him officially at all?

A. No, sir.

Q. Did he bring an order for these things?

A. Yes, sir.

Q. From whom?

A. The glass was put in my custody by the Secretary of War, and upon the order of the Secretary of War I intrusted this to Colonel Conger. Three days afterwards the same glass precisely was returned to me, as I know from certain marks upon it.

Q. How about the pin?

A. The pin has not been out of my possession.

By Mr. PIERREPONT:

Q. Will you please state the date when the field-glass was out of your possession and in the hands of Colonel Conger?

A. Yes, sir. It was given to him on the 13th of June, 1867, and returned to me on the 17th of June, 1867.

JOHN M. LLOYD—examination resumed.

By Mr. PIERREPONT:

Q. See if you see any mark on this field-glass that you ever saw before, (handing witness the glass.)

A. (After examining the same.) It is my impression that this is not the kind of a one that I saw. That one was made something like this, but just on top in the centre here was printed, in larger letters than these are, "field-glass."

Q. Did you take it and examine it at all?

A. I did take it, and attempt to look through it, but I could not see anything.

Q. You could not see through it?

A. No, sir. I do not know what anybody wants such a thing as this for.

Q. Was it such a thing as this?

A. This resembles it very much. It was such a make as this. It was a double glass.

Q. Was it like this?

A. That I cannot say. I did not examine it closely. I can only say that just on top here between these two glasses was printed in yellow letters, "field-glass."

Q. Turn that little screw there and tell us what you see then?

A. (After turning the screw as directed.) I see "marine."

Q. Turn it further.

A. (Still turning.) I see "theatre," "field," "marine." The other one that I saw had "field-glass" printed just between these two glasses.

Q. Was it printed like that?

A. The letters were larger than these.

Q. But the same kind of letters?

A. The letters on the other were yellow.

Q. What kind of letters are these?

A. That I can hardly tell.

Q. What color I mean?

A. I will leave that to somebody who has a little better eyesight.

Q. Was it in a case like that?

A. It was in a case something like this, wrapped up in a piece of paper.

Q. You state you took the paper off the package, what did you first see?

A. My curiosity prompted me to open the cover of it.

(The glass was here handed the jury for inspection.)

Q. What did you find when you removed the paper covering?

A. I found an instrument a good deal like this.

Q. As to the case?

A. I found the case I suppose, something similar to this. It was a leather case.

Q. You found that first?

A. Yes, sir.

Q. Then you opened it?

A. Yes, sir.

Q. Whatever Mrs. Surratt left there of this kind you gave to somebody that night?

A. Yes, sir.

Q. Did you give it to the one with the broken leg, or Herold?

A. I think Herold took it off. As well as I remember, I did not go outside of the gate until Herold took the things. I think Herold took them out.

By Mr. WILSON:

Q. Examine those guns that are there, and state if you can identify them.

A. This breech is the only thing that attracted my attention.

(Witness took the gun in his hand and pointed out to the jury the peculiar feature about it that attracted his attention.)

Q. Describe the cartridge-box?

A. The cartridge-box, as well as I remember, was a common United States cartridge-box. I think "U. S." was on it.

Q. State whether it seemed to have ammunition in it from its weight?

A. That I did not notice.

Q. Who did you give the cartridge-box to?

A. Herold took the things off I think.

Q. Have you seen the cartridge-box since you gave it to Herold?

A. No, sir.

Mr. BRADLEY. I do not understand that these things are presented in evidence.

Mr. PIERREPONT. I do not understand that they are as yet. We shall offer them in evidence shortly.

The COURT here took a recess for half an hour.

AFTERNOON SESSION.

Examination of JOHN M. LLOYD continued.

By Mr. PIERREPONT:

Q. When Herold was there getting those guns, did you hear him use the name of Booth?

A. No, sir.

Q. Did you hear him use the name of Wilkes?

A. No, sir.

Q. Neither one nor the other?

A. No, sir.

Cross-examination by Mr. MERRICK:

Q. Have you ever been examined in relation to this matter before?

A. Several times.

Q. When were you first examined, and by whom?

A. I was first examined at Bryantown, by Colonel Wells.

Q. When was that?

A. I disremember the date. I think it was on Saturday, a week after the assassination.

Q. When were you next examined?

A. I was examined by two different persons at the Carroll prison, or partially examined.

Q. Was your first examination before Colonel Wells reduced to writing?

A. I believe it was.

Q. Who were the two persons who examined you in prison?

A. I did not know either of the names. Judge Olin, I have since found out, had an interview with me, and there was a military officer there.

Q. Did they come at the same time or at different times?

A. At different times. The military officer was a rather small man.

Q. Who was the military officer?

A. I did not know his name, and I do not know whether I found out. I do not know whether his name was given correctly to me or not. I think some of the prisoners described him as Colonel Foster.

Q. Did you ever see him afterwards?

A. I am not positive about seeing him afterwards. I saw a man at the conspiracy trial as one of the judges who looked very much like him.

Q. When were you next examined?

A. I was next examined before the military commission.

Q. Do you know Mr. Bingham?

A. I saw Mr. Bingham there; I am not personally acquainted with him.

Q. Have you ever been examined by him except when examined before the military commission?

A. Not that I know of.

Q. Was that examination by Colonel Foster reduced to writing?

A. I think it was taken down. He had a young man there taking it down.

Q. Have you testified to-day to the same facts you testified to before the military commission?

A. I may have been mistaken in some of them. My memory is not sufficient to go back over the whole that has transpired here.

Q. At the time of your examination before Colonel Wells, on the Saturday after the assassination, was he accompanied by any number of soldiers?

A. He had soldiers all round there outside, and some inside the place.

Q. Will you state whether or not, at the time of, or prior to, your examination before Colonel Wells, or at the time of or before your examination before Colonel Foster, any offer of reward was held out to you in regard to your evidence, or any threats used in reference to your testimony?

A. I can only state that Mr. Cottingham, who had me with him before sending me to Bryantown, stated that he wanted me at Bryantown to look after parties, and that the government would protect me in my property and support me, and see that I was returned home.

Q. Was that all?

A. That was all with him.

Q. Was there anything else with any one else?

A. While I was there in Carroll prison, this military officer came there and told me he wanted me to make a statement, as near as I remember. I told him I had made a fuller statement to Colonel Wells than I could possibly do to him under the circumstances, while things were fresh in my memory. His reply was that it was not full enough.

Q. What else did he say?

A. He said that it was not full enough, and then commenced questioning me whether I had ever heard any person say that something wonderful or something terrible was going to take place. I told him I had never heard any one say so. Said he, I have seen it in the newspapers.

Mr. PIERREPONT. I have no objection to this if it is pertinent. Is it pertinent to examine a witness as to what he said to an officer?

The COURT said he thought it was not pertinent; he did not know what the object was, unless it was to contradict the witness, and if that was the object the proper course was to ask him if he had not on such an occasion said thus and so.

Q. You state that that military officer told you that the statement you had made to Colonel Wells was not sufficient?

A. He said, as I remember that it was not full enough.

Q. Did he say anything to you in the way of offering a reward, or use any threat towards you, for the purpose of getting you to make it fuller?

A. When I told him what I had repeated before, that I did not remember any person saying thus and so, he jumps up very quick off his seat, as if very mad, and asked me if I knew what I was guilty of. I told him, under the circumstances I did not. He said you are guilty as an accessory to a crime the punishment of which is death. With that I went up stairs to my room.

Q. Was anything else said?

A. Nothing more, that I remember, after he made use of that remark.

Q. Have you ever said to George W. Dent, or anybody else, that at the time you were taken, soon after this assassination, they threatened to hang you unless you would testify in regard to this matter, and that you did testify to save your life?

A. No, sir; I do not remember.

Mr. PIERREPONT. I object to that question, although it has been answered, and ask that the answer may be stricken out.

The COURT. It may be stricken out. It was not relevant, and the other side is concluded by the answer.

Q. Were there threats used towards you by soldiers at the time of your examination by Colonel Wells?

Mr. PIERREPONT. I have no doubt as to what the answer will be, but at the same time I object to it. Mr. P. then stated the ground of his objection, that the question was irrelevant to this inquiry, and as other similar questions would be put, he asked for a decision of the court.

Mr. MERRICK, after argument, suggested that as his colleague (Mr. Bradley) was absent for a moment, he desired the decision to be withheld till he, Mr. B., could be heard, and with the consent of the court proceeded with the examination.

Q. I understood you to say you had not examined those carbines until you delivered them that night?

A. No, sir; I do not think I examined them at all, and did not examine them that night. I did not examine them at all, as well as I remember.

Q. Did you testify on the occasion of the military commission that you took off the cover from one of them and that the peculiar kind of breech attracted your attention?

A. No; I do not think that was my testimony. I think it was when Herold took the cover off.

Q. You do not think you testified that you took the cover off?

A. I think not; in fact, I am pretty certain I did not.

Mr. BRADLEY here came into court, and after argument on the objection above made by Mr Pierrepont, the court decided that counsel might cross-examine the witness in reference to whether he had or had not received any promise of reward, or had or had not received any threats, in regard to the testimony to be given by him on this occasion.

Mr. BRADLEY. We do not wish to trespass upon the ruling of the court, but to bring the matter more distinctly for its ruling, we propose to ask the witness this question. Whether he did not state, in substance and effect, that he had been threatened with being hung unless he made oath to a certain written statement made out for him to swear to, which written statement contained the substance of the proof given by him in this case.

Mr. PIERREPONT. I believe he has already answered that question, but we object to it.

Mr. BRADLEY. I will add to the question, and whether he did not also say that he swore to that statement to save his life, and whether he has not stated the same in substance and effect within the three months last past?

The COURT. Referring back two years ago?

Mr. BRADLEY. Yes.

Mr. PIERREPONT. If the counsel will put the question in reference to this trial, we do not object.

Mr. MERRICK. Certainly, speaking of this trial.

Mr. BRADLEY. I was going to add to the question, whether he did not say that he would give very different testimony on this trial.

Mr. PIERREPONT. That is, you are going to show that he would swear differently from the truth.

Mr. BRADLEY. No, sir; that he would swear to the truth. I wish to add to the question whether he did not say that he would have given very different evidence if he had not been put in fear?

The COURT. The question is inadmissible in that form. You may put the question as to whether he has had any promise of favor or reward, or any hope of reward held out to him, or any threat made in order to induce him to testify, having reference to this trial.

Mr. PIERREPONT. That we do not object to.

Mr. BRADLEY. Let me finish my question—and that if it were not for his previous examination he would give different testimony now?

The COURT. The question is overruled. The examination must be confined to such threats and promises as were made with reference to testimony to be given upon this occasion.

Q. I understood you to say there were certain guns concealed by you, or that you were requested to conceal some guns. Will you state whether it was any uncommon thing to conceal guns in that region of country?

(Question objected to by district attorney.

Objection overruled.)

A. There was nothing unusual for any one to have shot-guns without concealing them.

Q. Were not the military taking possession of fire-arms in that neighborhood?

A. They had been, as I understood.

Q. Did I understand you that you expected the house would be searched about that time?

A. I did; I got information that they were searching houses in that neighborhood, and removing all the fire-arms they found. From all I could learn, they had been, previous to that time, searching for fire-arms and taking them. Just at that time I do not know that they did.

Q. Do you know what Mrs. Surratt's business down there at that time was?

A. I do not.

Q. Did not she go down to see this Mr. Nothe about some money matters?

A. I do not know, except by hearsay.

Q. Who was in the house at the time Mrs. Surratt was there?

A. There were several in the bar-room. Alfred Jarboe stopped there on his return from Marlboro'. A man by the name of Lusby, Mr. Jenkins, and several others were there—I do not know who they were.

Q. Was there a lady there by the name of Mrs. Offutt?

A. She was there.

Q. Who was with Mrs. Surratt when you saw her?

A. Mrs. Surratt was alone when I first saw her; she met me alone.

Q. Whereabouts in the back yard did you meet Mrs. Surratt?

A. Near the wood pile.

Q. How far from the door?

A. I suppose fifteen or twenty feet, probably.

Q. Was it between the quarters and the kitchen?

A. Yes, sir.

Q. Where was Mrs. Offut at the time?

A. She was in the yard at the time; she came right out of the door after Mrs. Surratt spoke to me.

Q. How far was she from Mrs. Surratt?

A. At the time Mrs. Surratt spoke to me I suppose she was fifteen or twenty feet; she was right at the door and Mrs. Surratt was out where I was.

Q. Was one of Mrs. Offutt's children out there at the time?

A. That I do not remember; I never could remember even who took my horse and buggy.

Q. Did not you see anybody take it?
A. I do not remember at all who took it.
Q. You say you came up from Marlboro' that day. What had you been doing down at Marlboro'?
A. I was summoned there at court to attend a trial.
Q. Did I not understand you to state that you had been playing cards and drinking?
A. I did, after the court adjourned.
Q. When did the court adjourn?
A. I think about three o'clock.
Q. Had you not been drinking during the day?
A. I do not think I drank anything of any consequence during the day.
Q. Had you drank anything?
A. I do not think I drank anything until the court adjourned. I knew what effect liquor had on me.
Q. What effect has it?
A. A very singular effect, upon my mind chiefly. It makes me forget a great many things.
Q. How much did you drink after the court adjourned?
A. I drank enough to make me drunk.
Q. Were you very drunk?
A. I was so drunk that when I lay down I felt sick. I could not lie down.
Q. Who undressed you that night?
A. I suppose I undressed myself; there was nobody else there to do it.
Q. Did not Mrs. Offutt take off your coat?
A. I believe so; I do not recollect.
Q. At what time did you lie down that night, after Mrs. Offutt took off your coat?
A. That must have been when I first came home; when I threw myself on the lounge.
Q. You saw Mrs. Surratt directly when you got home?
A. Yes; when I drove up.
Q. I understood you to say that she staid there about five minutes?
A. About that long.
Q. Can you recollect who took her horse and buggy?
A. I have no recollection.
Q. How long after Mrs. Surratt went away did you lie down?
A. I lay down before she left. I was lying down on the lounge when Mrs. Surratt came in and asked me to fix the buggy.
Q. Did not you take something to drink after she went away that night?
A. I have no doubt I did.
Q. Don't you recollect it?
A. I am not positive about it. I may have done so. I was drinking very freely.
Q. When you get drunk do you just lie down and get sober, or do you keep up the spreeing?
A. I sometimes keep it up several days.
Q. Had not you fallen into a bad habit of getting drunk before that?
A. From the time I took that place, and often previous to that, I was in the habit of taking a good deal of liquor.
Q. What kind of a place is it; a sort of tavern?
A. A hotel or tavern.
Q. You had charge of it; you managed it?
A. Yes, sir.
Q. Did you keep liquors in the bar?
A. I did.
Q. Then you were a good customer, as well as your friend?
A. Unfortunately for me, I was the best customer.
Q. I suppose you had frequently friends coming in from the surrounding

neighborhood to drink, and that you found a plenty of persons to drink with you when you wanted to drink?

A. It was my misfortune, they would always invite me to drink.

Q. At what time, the next morning, did you wake up?

A. I suppose the sun was up when I got up the next morning.

Q. Did you take a drink as soon as you got up?

A. I commenced drinking as soon as I got up.

Q. Your mouth felt pretty hot, I reckon?

A. I believe it did.

Q. When you first got up did you recollect what passed the night before?

A. I did not charge my mind with what had passed the night before, until the soldiers came. After they came they assured me what had been done.

Q. I understood you to state, in reply to questions in chief, something about a conversation, and what had happened; now I want that whole conversation, as well as you can recollect it.

WITNESS. What is that?

Mr. MERRICK. When these two men came down there that night, Herold and somebody else, what was said?

WITNESS. You have already got most of that; about everything, in fact.

Q. Did not you testify before the military commission that you were asked by one of them if you did not want to hear the news?

A. Yes.

Q. And that you replied you were not particular, or did not want to hear it?

A. I told him he might use his own pleasure about that; that I did not care anything about hearing it.

Q. And then they told you that the President had been killed, or that "we have killed the President?"

A. "We" or "they," I do not remember which.

Q. At what time did the soldiers get down there?

A. About eight o'clock. I had not been up very long.

Q. You say they told you that they had killed the President, but that you never thought much about it until the soldiers came?

A. I thought the man was drunk. I paid no attention to it. He talked to me as if he was drunk.

Q. Do you recollect when the police officers came out there?

A. I recollect when Clarvoe came.

Q. Did you tell Clarvoe that Herold had not been there?

A. I do not recollect distinctly the question Clarvoe put to me. The soldiers had been there before he got there.

Q. Why cannot you recollect; were you drunk?

A. I had been drinking that morning, and then I became frightened after the soldiers told me what had been done. I did not know what to do or how to act.

Q. Try and recollect what Clarvoe said to you.

A. As well as I recollect, he told me there was money enough in this thing to make both of us rich if I would give him any information I possessed.

Q. Didn't you tell him then that neither of these men had been there?

A. I may have done so.

Q. Don't you recollect that you did do it?

A. I have not the least doubt I did do it. I did not want to be drawn in as a witness in the affair at all. I knew that Mrs. Surratt's name would be drawn in if anything was said, and I did not want to say anything about it.

Q. What did you tell him?

A. I really cannot tell you any more. All these men were coming there that morning, and were applying for information.

Q. What did you tell Clarvoe and McDevitt?

A. I think I told them I knew nothing about the circumstances at all.

Q. What were you doing at the time Mrs. Surratt held this conversation with you in the yard?

A. I had just got out of my buggy, and was bringing in some fish and oysters I had got at Marlboro' into the house.

Q. She was talking with you as you were walking along?

A. Yes; when she handed me this package.

Q. The conversation occurred while you were walking?

A. Pretty much as we were walking.

Q. Were you walking towards Mrs. Offutt?

A. I am not certain about that; I was walking towards the house—towards the kitchen door.

Q. Was not Mrs. Offutt in that direction?

A. She was when I first saw her.

Q. Do you recollect taking up Mrs. Offutt's child?

A. I did not before I got into the house.

Q. Do you recollect taking it up in the house?

A. I do not.

Q. You do not recollect?

A. I almost always did when I met it. I do not recollect it that night.

Q. Was Mrs. Offutt standing near enough Mrs. Surratt to hear your conversation?

A. I do not know exactly; she might have been.

Q. Did Mrs. Surratt in her conversation say anything about where John was?

A. We had no conversation at all at that time except about the delivery of those things.

Q. Had you been drinking when you met Mrs. Suratt at Uniontown?

A. I had taken, I reckon, probably two or three drinks.

Q. Who was with you in your carriage when you met her on Tuesday?

A. Mrs. Offutt and child, and Walter P. Griffith.

Q. I understood you to say that Mrs. Surratt was in a buggy with Mr. Weichman?

A. Yes, sir, I suppose so; I did not know him at all.

Q. You have been asked about that conversation; were you sitting in your carriage when it took place?

A. No, sir, our carriage had passed. I did not recognize her until she was right opposite. She had passed twenty-five or thirty feet when I saw that she was holding up. I drew up immediately, and got out and went to her, supposing she wanted to see me about business. We had a little unfinished business in regard to the crop on the land. I judged she wanted to see me about that, and I got out to see her. It was then that the conversation occurred.

Q. Was the conversation in an ordinary tone?

A. About as loud as I am talking to you; not as loud as you are speaking to me. It was in an ordinary tone of voice.

Q. Did she say anything in that conversation about John?

A. She did.

Q. Did she say where he was?

A. She did not say where he was, but left the impression on my mind that he was in Canada.

Q. Have not you said that she told you he was in Canada?

A. I think not.

Q. You say you delivered these various articles, guns and whiskey, to Herold that night?

A. I did not deliver the whiskey only what he drank out of the bottle; he returned the bottle.

Q. Did he pay you for it?

A. He gave me a dollar, saying at the same time, "I owe you a couple of

dollars; take this." That was all the pay I received on the bill and whiskey together.

Q. What time in the night was that?

A. About midnight.

Q. Who roused you up?

A. I think it was probably Herold himself.

Q. Hallooing about?

A. Very likely.

Q. Did you take a drink before you went down?

A. No; I do not think I drank anything that night. I was pretty hot and I think I took a drink of water.

Q. Didn't you take a drink while they were there?

A. I think not.

Q. I understood you to say that you lay down on the lounge, and that it made you sick. At what time did you go to sleep before you were roused up by these parties coming there?

A. I cannot tell you at what time I retired to bed.

Q. At what time do you think it was?

A. That I am unable to say, because I never charged my memory with it. It was not very late.

Q. Were not these men there drinking and playing cards until it was pretty late?

A. No, sir.

Q. Did nobody play cards that night?

A. No, sir; it so happened that when I was at Marlboro', that day, playing cards with a young man, I got mad and came pretty near getting into a fuss, and when I saw him there that night I prohibited any card-playing.

Q. He was there that night, was he?

A. He was.

Q. You were roused at 12 o'clock; you went down outside, and after that the conversation you have stated took place?

A. I went down into the bar-room first, as I remember, after letting Herold into the house.

Q. Did he get down from his horse?

A. O, yes; Herold got down and came into the bar-room. I went behind the bar and set out these bottles of whiskey; then I went up and brought the carbine down, if it was a carbine. Herold in the mean time was out at the front gate, and in going out there I think I met him; as near as I recollect, I gave him that thing, brought the bottle of whiskey in, and then went out again.

Q. Did he ask you for a bottle of whiskey?

A. No; only for something to drink; I think that was his remark.

Q. Did he ask you for a gun?

A. No; he mentioned nothing more than to get those things.

Q. I understand you that you went to bed tolerably drunk?

A. I do not deny that.

Q. And you were roused up about 12 o'clock? Do you recollect the exact conversation do you think?

A. That has been my impression all the time.

Q. I understand you to say, further, that whiskey has a remarkable effect upon your mind, in blurring your recollection?

A. So it does; it always did.

Q. Is it not your experience that, sometimes, when you have been drinking at night and playing cards, you forget all about the game and how things stood?

A. I have no doubt I may have done, if there was nothing specially to attract my attention. There are many instances in which, unless there was

something positive to attract my attention, I would never remember what occurred.

Q. How many days before that had you been drunk every day? Had you not kept it up for some time before?

A. Not immediately before; I was trying to break myself from it.

Q. But you could not resist breaking over on this occasion?

A. I do not believe there was anybody else who could resist and keep that place.

Q. Did you drink anything on Thursday?

A. I drank something every day as to that matter. I took a toddy or two every day.

Q. Do you remember who was at Surrattsville Thursday night?

A. I do not.

Q. Don't you recollect that there was a company of gentlemen in your bar-room that night, drinking?

A. I do not recollect at all. I saw so many persons coming there so many different days that I could not remember that particular day.

Q. Can you recollect where you were on Thursday night?

A. I could not, unless I was at home.

Q. Do you recollect whether you went to bed pretty drunk on Thursday night or not?

A. That I cannot tell; I do not recollect that.

Q. I understood you also to say that the moon was shining at 12 o'clock that night?

A. It was.

Q. Whereabouts in the heavens was it?

A. I had not been there long enough to get the location, which was east and which west.

Q. You did not know the points of the compass?

A. I did not.

Q. Tell us whereabouts, relative to the location of the house, the moon was shining?

A. As well as I remember, the moon was shining, but I paid very little attention to it at all.

Q. I thought you said the moon was not very high above the horizon?

A. That was my impression, from the fact that it was not shining very bright.

Q. Was it a clear night?

A. I do not remember seeing any clouds; I never took any particular notice of it at all.

Q. Do you know whether the moon was shining when you went to bed, or not, in the early part of the night?

A. I do not think it was.

By Mr. PIERREPONT:

Q. When you came into court this morning and took an oath upon the book, what was your condition as to being sober or otherwise?

(Question objected to by Mr. Bradley. The witness was before the jury, and they could judge as to his condition. Objection sustained by the court, the question not being in reply to anything brought out in cross-examination.)

Q. You have been asked in regard to your habit of drunkenness; about that time, were you drunk every day?

A. I cannot say whether I was drunk every day. I was drinking every day.

(Question objected to by Mr. Merrick, as relating to a matter brought out by the examination in chief and only replied to in cross-examination.

Mr. Pierrepont said that what the witness had stated on that subject was not in response to any question in the examination in chief.

Objection sustained by the court.)

Q. You say you were drinking every day about this time?

A. I was, and I found the habit was getting too strong for me?

Q. You have thought on the subject on which you have testified?

(Question objected to by Mr. Merrick, as incompetent.

Objection sustained.)

Q. At the time you came home that day, you say Mrs. Surratt was there?

(Question objected to by Mr. Merrick, as relating to a matter already brought out in the examination in chief.

Mr. Pierrepont said his object was to find out where Mrs. Offutt was, in reference to whom no questions had been asked in the examination in chief. He had never heard about Mrs. Offut until her name was mentioned in the cross-examination.

The court decided that the examination must be in reply to such distinct matters as had been brought out on cross-examination.)

Q. Give us the exact position of Mrs. Surratt when you came home.

(Question objected to by Mr. Merrick, and objection sustained.)

Q. Where was Mrs. Offutt when you came home?

A. Mrs. Offutt was in the house when I first drove up, I suppose. She came to the door to come out of the house.

Q. Did Mrs. Offutt speak to you?

A. O, yes; she always did.

Q. What did she say to you on that occasion?

A. I do not think she spoke to me on that occasion. I do not remember whether she did or not.

Q. At the time you came home, who drove you home?

A. I think I drove myself.

Q. You were not so drunk you could not drive?

A. I could drive if I could sit up at all.

Q. Did you get out yourself?

A. O, yes.

Q. Did anybody help you out?

A. No one helped me out.

Q. When you went to speak to Mrs. Surratt, did you stagger?

A. That I do not recollect.

Q. Did you fall down?

A. Really, I cannot remember such a thing.

Q. Is it your best recollection that you did fall down?

(Question objected to by Mr. Merrick, as not in reply to cross-examination.

Objection sustained.)

By the COURT:

Q. You stated that whiskey or liquor would have a very peculiar effect upon you; that when you had been drinking you did not remember things distinctly; do you mean by that that you do not remember, when you are drunk, something that happened before you got drunk, or that you cannot recollect what took place while you were drunk after you get sober?

A. I will explain: In case of going before a court to give testimony, or anything of that kind, I cannot in justice to myself taste any liquor, without making me possibly say something, or use some expression, that I would not wish to, or oftentimes making me forget things I do not wish to forget.

By Mr. PIERREPONT:

Q. And therefore when you go before a court you do not taste liquor?

A. When I go before a court I do not taste liquor.

By Mr. BRADLEY:

Q. Do you mean that you can recollect distinctly things that pass when you are drunk?

A. There are a great many things I could not pretend to recollect when I was drunk; for instance, you could tell me anything at all when I was drunk, and I would not think of it five minutes afterwards, and would not remember it afterwards at all, unless something occurred at that particular time to draw my attention to it.

Q. You have just stated that you could not tell whether you staggered or whether you fell down, while you were going to meet Mrs. Surratt, after you came home?

A. Yes, sir.

Q. Now, in regard to meeting Mrs. Surratt on the next day, what time of the day was it?

A. I think, as well as I remember, it was about 11 o'clock in the day?

Q. How far had your carriages passed each other?

A. I do not think more than twenty-five or thirty feet.

Q. You both pulled up as soon as you could?

A. She pulled up as soon as she recognized me, and I did the same.

Q. Was it more than the length of the horse and buggy?

A. It may have been twice the length of the horse and buggy; I do not remember distinctly.

Q. Do you remember which way you passed?

A. We passed to the right of each other.

Q. Mrs. Offutt and her child were in the carriage with you; what sort of a carriage were you in?

A. In a two-horse carriage.

Q. With a top to it?

A. Yes, sir.

Q. Who was driving?

A. I was driving myself.

Q. Was Mrs. Surratt in a top buggy, with the top down?

A. She was in a top buggy with the top up; it had been raining.

Q. You think the top was up?

A. I am satisfied of that.

Q. I want to know whether there was anything different from usual in the tone of her voice on that occasion; whether there was any secrecy in the manner in which she spoke to you.

A. It did not seem so to me; in fact, the only thing that appeared to me to be out of the way, in connection with our conversation, was the manner in which she put the first question. As regards the tone of her voice, it did not seem to me other than ordinary. It may have been a little lower than the ordinary tone. There was nothing like a whisper.

Q. Loud enough for Mr. Weichman to hear the conversation?

A. I cannot swear that Mr. Weichman heard her. I told him, when in prison, that he might have been a deaf man for what I knew.

Q. He was sitting in the buggy, and you were on the outside, standing in front, talking in an ordinary tone of voice?

A. Yes, sir. I was not more than three feet from Mrs. Surratt at any time.

Q. Do you recollect having testified anything else that passed between you and Mrs. Surratt?

A. I do not recollect that I did.

Q. She said nothing about Mr. Nothe?

A. No, sir; I think not.

Q. She said nothing about Captain Gwynn?

A. I do not think she did, or that she made any remark about any business except that and John being away.

Q. Do you recollect her saying anything about being near-sighted, so that she did not see you when you were passing?

A. No, sir, not at that time.

Q. You do not recollect when you got into the carriage that you said anything about what had passed between you and Mrs. Surratt?

A. I do not.

Q. When she was speaking to you in the yard on that Friday was it in an ordinary tone of voice?

A. It appeared to me so; it did not appear anything unusual at all.

Q You say she gave you that package out in the yard. Where did you take it first?

A. I took it first and laid it on the sofa in the back room.

Q. Was not that package lying on the sofa in the back room, and did Mrs. Offut give it to you?

A. I do not know that she did.

Q. When you came in was it not wrapped up and lying on the sofa?

A. I do not remember that it was.

Q. You do not remember that Mrs. Offutt gave it to you at all?

A. I do not recollect.

Q. In your examination in chief I understand you to say that Herold went down below your house; that he started alone, and the next morning came back with these carbines?

A. The night before Herold started alone; the next morning I saw his horse at my front gate.

Q. You did not see Herold bring them?

A. I did not. I knew nothing about the carbines or anything of the kind until my attention was called to them in the front room.

Q. Herold, if I understand you, went down the night before and the next morning came back, and when you came in you found the carbines in the room, who brought them you do not know?

A. I was invited into the room by John Surratt.

Q. You do not know who brought them in?

A. I do not.

Q. Do you know where Herold went that night?

A. He told us in the bar-room that he was obliged to go to T B that night. It was getting very late when he left. I told him that I had one spare bed which he might occupy if he wished.

Q. You did not see him come back with the carbines on his return from T B?

A. I did not.

Q. You did not see him with any shot-guns?

A. No, sir.

Q. What time did he leave your house to go to T B?

A. I suppose near 11 o'clock that night.

Q. What time did he get back the next day?

A. The next morning he came back about 8 or 9 o'clock.

Q. Do you know where he came from when he came to your house the day before?

A. I do not.

Q. You do not know what direction he came from?

A. It was dark when he got there. I do not know from what direction he came.

Q. How far is T B from your house?

A. It is called five miles.

Q. How far from Port Tobacco?

A. I do not know exactly; I am not acquainted with that road.

Q. I want, if possible, that you should fix with some degree of certainty the

date when Herold was at your house that night and the next morning brought back the guns; fix that as nearly as you can.

A. If I had my bar-room book I could tell exactly.

Q. Where is it?

A. The military authorities took it; I have never seen it since.

Mr. BRADLEY (to district attorney.) Have you it in your possession?

The ASSISTANT DISTRICT ATTORNEY. We know nothing about it.

WITNESS. I called on Judge Holt afterward; he said he knew nothing about it; there were some bills on it I wanted to make out, but I never got hold of it.

Q. Without that bar book cannot you fix by other circumstances within a week of the time?

A. I think Mr. Collenbach made out some bills from that book.

Q. Who is Mr. Collenbach?

A. A carpenter, who lived in that neighborhood; he is in the city now. Those bills are now down in that county for collection. If I could get hold of one of those I could ascertain with certainty.

Mr. BRADLEY asked consent to recall the witness to ascertain the date in question if he should obtain one of the bills referred to.

The DISTRICT ATTORNEY assented.

Q. Was it as much as two months before the assassination?

A. I do not think it was; I am satisfied it was not more than six weeks.

Q. You say you saw John Surratt again on the 25th of March?

A. That, I think, was the last time I saw him.

Q. Was anybody in company with him on the 25th of March, the last time you saw him?

A. He came with his mother and another lady in the carriage.

Q. Did he stop at your house and return or go on?

A. I think they stopped long enough to get their dinner.

Q. Did they separate there or not?

A. His mother remained there, and I think some gentleman came with a buggy and took her back to Washington, or took her away, as well as I remember.

Q. Which way did John and the other lady go?

A. I did not see which way they went from the house; they left there.

Q. How were they riding?

A. They were riding, as well as I remember, in a carriage with two horses.

Q. Do you remember the color of the horses?

A. It strikes me they were gray horses.

Q. One gray and the other not?

A. It strikes me both were gray.

The DISTRICT ATTORNEY objected to further examination, as the cross-examination had once been finished.

The COURT said he so understood it, and that counsel for the prosecution had proceeded with their examination in reply.

Mr BRADLEY said he only desired to ascertain, when he stopped at the house of the witness for the last time on the 25th of March, who was with him.

By the DISTRICT ATTORNEY:

Q. Did Mr. Weichman hear this conversation to which you have testified between you and Mrs. Surratt?

A. That I am unable to say. As I said before, Mr. Weichman was an entire stranger to me. As far as I know he may have heard it.

Q. She was sitting in a buggy with him?

A. He was sittingalong side of her.

Q. Did he take any part in the conversation?

A. Not at all; she was sitting with her head a little forward, towards me.

Q. You did not observe that he took any part?

A. I noticed that his eye was cast towards mine when I looked up after she had made use of the expression. When I looked at him he turned his head.

Q. Your recollection of these facts is very distinct?

A. I am satisfied of the facts I state.

EVERTON J. CONGER was sworn as a witness for the prosecution, and the court took a recess until to-morrow at 10 o'clock a. m.

TUESDAY, *June* 25, 1867.

The court met at 10 o'clock a. m.

JOHN W. GARRETT sworn and examined.

By the DISTRICT ATTORNEY:

Q. State your residence.

A. Caroline county, Virginia.

Q. State where you lived in April, 1865.

A. I lived at the same place.

Q. Did you know John Wilkes Booth?

A. Yes, sir.

Q. State when and where you first saw him.

A. I saw him at my father's house; I do not remember the date; two days, I think, before he was killed there.

Q. Was he alone, or was he with some one?

A. He was with some one.

Q. Who was he; do you know?

WITNESS. Do you wish to know who he was brought there by?

Mr. WILSON. Yes.

A. He was brought there by two men by the name of Jett and Ruggles.

Q. State briefly and distinctly when he came there, where he went, and what he did.

A. I saw him when he rode up to the house.

Q. Do you remember the day of the month?

A. I do not; I think it was on Wednesday.

Q. At what time in the day?

A. In the afternoon.

Q. Was he on horseback?

A. He was.

Q. Describe the horse he rode.

A. I cannot; I do not remember the horse; I was lying down at the time he came; I heard the dogs barking; I rose up, looked out, and saw him dismounting from the horse; I do not remember what kind of a horse it was.

Q. Who was with him?

A. Ruggles and Jett.

Q. Any one else?

A. No one else.

Q. Did you know Herold?

A. Yes, sir.

Q. When did you see him?

A. He came the next day.

Q. State what Booth did after he came there?

A. I don't know anything in particular that he did. He remained there the first night; he was not there the second night.

Q. Did you observe his condition physically, his limbs, &c.?

A. He was very lame.

Q. What was the matter; do you know?

A. He said his leg was broken. I did not examine it.
Q. He remained at your house that night; what did he do the next day?
A. He remained about the house; I do not think he went away at all.
Q. How long did he remain in the house?
A. I don't know; I was not at home during the day.
Q. You came home at night?
A. I saw him at dinner.
Q. Was he there then?
A. He was.
Q. How long did he stay there?
A. He remained until after dinner; then some cavalry came along, and he left the house for a short while, and I think returned again.
Q. Where did he go?
A. I do not know where; he could not have gone far, because he came back very shortly.
Q. Did you see him leave the house?
A. I did not.
Q. Did you see him return?
A. I did.
Q. Which way did he return?
A. From the direction of the woods.
Q. Was Herold there at the time?
A. He was.
Q. When did he come?
A. He came in the afternoon.
Q. Did he go out with Booth?
A. He did.
Q. And came back with him?
A. I don't know whether he did or not.
Q. How long did Booth remain the second time he came?
A. I do not know whether he entered the house the second time or not; yes, he did, and took supper there.
Q. What did he do after supper?
A. After supper he went to the barn and staid there until the cavalry came.
Q. At what time was that?
A. I do not remember at what time he went; the usual bed-time I suppose.
Q. Who went with him?
A. Herold.
Q. State, if you please, what articles Booth brought, and what Herold had with him.
A. That I do not know. I remember Booth had a pistol or pair of pistols, a bowie-knife and a field-glass.
Q. What did Herold have?
A. I think he had a carbine; I am not certain about that.
Q. How did Herold come; on horseback or on foot?
A. He came on foot.
Q. Examine that glass, (field-glass exhibited,) and see if you ever saw it before.
A. I cannot testify that I ever saw this glass; I have seen one similar to it.
Q. Where?
A. At my father's house.
Q. State whether the one you saw Booth have was similar to this.
A. Similar to this; yes, sir.
Q. Did it have a case?
A. Yes, sir.
Q. Where did you see it last?
A. I saw it at my father's house, in Booth's possession.

Q. Did he take it with him to the barn?
A. I don't know; I suppose not.
Q. How long did you have it in the house?
A. I don't know.
Q. Did you see it there after Booth was captured?
A. I did not.
Q. Describe the carbine Herold had.
A. I could not; I did not examine it.
Q. Did they have any other articles?
A. I think they had a large shawl. I do not know which had it; it was in their possession.
Q. What became of the horse Booth rode?
A. The men carried it back.
Q. Describe it.
A. I do not remember; I think it was a sorrel.
Q. Describe the place where Booth was captured; how near the house.
A. I suppose 150 or 200 yards. It was a large tobacco house. It was as far from the house, perhaps, as from here across the street.
Q. Describe the manner in which that house was built.
A. It was a large house, I think about sixty feet square, built with sheds on each end. It was intended for tobacco; we used to have a good deal of tobacco before the war.
Q. Was it close?
A. Pretty close. There were spaces left between the boards to air the tobacco.
Q. How wide were the spaces?
A. I suppose about four inches apart.
Q. State whether the barn was full or empty; what was in it?
A. There were a good many farming implements, some hay, and fodder.
Q. Examine these carbines, (two carbines exhibited,) and state whether Herold had a weapon like that.
A. I did not examine the carbine at all. I only know it had a string on, (selecting one;) I suppose this must have been the one he had.
Q. It had a string on like that?
A. I think it had a string on, but do not know. I never examined the carbine at all.
Q. State, if you please, what occurred when the officers came to the house.
A. The first intimation I had of them was hearing them at the house. I went directly to the house. Three of them were standing around my father. As soon as I walked up, one of the officers, Colonel Conger, I think they represented him to be, turned to me and asked where I came from. I told him who I was, and asked him who he was in pursuit of. I told him there were two men at the house, and that they were now in the barn; that if he would go with me I would show him where it was. The three officers left my father directly and went with me to the barn. When we reached the barn one of them, I think Colonel Conger, said to me, "There are three rooms here, the tobacco-house and two corn-houses; if you do not tell me the exact house he is in, your life will pay the forfeit." I told him that, to the best of my knowledge, he was in the tobacco-house; that he went there the night before, and I supposed he was there at that time. Then, after stationing his guard round the house, I think Baker came to me and says, "I want you to go into that barn and demand the surrender of the arms that man has and bring them out to me. Unless you do it, I will burn your property." I went to the door and Baker unlocked it. I went into the barn; went up where Booth was lying. I think he was lying when I went in. As soon as I got up to where he was, he raised up. I told him what I was sent in there for. He asked me who the men were. I told him I did not

know; I only knew they were armed soldiers. He said, "If you don't get out of here I will shoot you; you have betrayed me. Get out of the barn at once." He raised to get his pistol and I went out at once.

Q. Where was the carbine?

A. I do not know; I suppose it was in the barn. It was very dark in there; I could not see anything.

Q. At what time was that?

A. I suppose two hours to day; I do not know; it was a very dark night. I went out and told one of the officers, Baker I believe, what he had said, and that if he thought proper to burn the barn he could do so, but I would not risk my life further; that I saw no necessity for burning the barn, if he would wait until daylight he could get him without destroying the property. I was then ordered by him to place some brush against the barn to fire it. Previous to this I had told him what the man inside said: "Young man, I advise you for your own good; if you do not leave at once I will shoot you." I think then there was a conversation between one of the officers outside and Booth inside; the exact words I do not remember. The officer outside demanded of him to come out. He said, "Who are you? Who am I to surrender to? Probably I might be taken by my friends." The officer, whoever he was—I think he was Baker—said, "We did not come here to hold any parley with you; we came to capture you; and unless you are out of the barn in five minutes, we will fire it."

Q. Did he come out?

A. Not until after the barn was fired.

Q. The barn was then fired. What then happened?

A. When the barn was fired the door was unlocked. Baker and myself were the first to enter the barn. He went directly to Booth, who was then falling or had fallen. I ran to extinguish the flames.

Q. Where was he, or had he been standing, before he fell?

A. I do not know; he was about in the centre of the barn then.

Q. Did you see him standing after the barn had been fired?

A. I did not; I did not look.

Q. Did you see who fired the shot that caused him to fall?

A. I did not; he had fallen or was falling when I entered the barn. I was the second to enter.

Q. Did you know Booth before he came there?

A. No, sir.

Mr. BRADLEY stated that he had no cross-examination, but desired to have his exception to this testimony noted.

EVERTON J. CONGER, farmer—resident of Richland county, Ohio—called and examined.

By Mr. PIERREPONT:

Q. What was your occupation in 1865, in the month of April?

A. Soldier.

Q. Of what regiment and what office did you hold?

A. Lieutenant colonel first District Columbia cavalry.

Q. Will you give to this jury an account of the capture of Booth; describe your coming to Garrett's house, what time in the day or night it was, and who was with you?

A. We got to Garrett's house about 12 or 1 o'clock of the night of the 25th and 26th of April; Byron Baker, First Lieutenant Dougherty, and twenty-five or twenty-six cavalrymen, belonging, I believe, to the sixteenth New York cavalry were with us; also a man by the name of Rollins, who lived at Port Conway, and a young man by the name of Jett, who when I found him was at Bowling Green.

Q. What was he with you for?

A. To show us where Garrett lived.

Q. Who else was with you?

A. I think that was all.

Q. Was there not a sergeant with you?

A. When I say soldiers I mean sergeants, corporals, and men sufficient to make up the number.

Q. Was there not a man by the name of Corbett?

A. Boston Corbett; yes, sir.

Q. What was his office?

A. He was a sergeant, I believe.

Q. Who commanded those soldiers?

A. I did.

Q. What did you do when Jett conducted you to the house?

A. Went to the house and put soldiers around it, and about the barn. Then went inside the house to see where Booth and Herold were.

Q. Did you learn?

A. Yes, sir.

Q. Who told you?

A. I think his name was John H. Garrett, this young man who has just been sworn.

Q. Then you went to the barn, or tobacco house; what then did you do?

A. I took soldiers from the house and stationed them around this place and set fire to it.

Q. That was not the first thing you did; describe all you did in the order in which it was done. After you stationed soldiers around it, what was the first thing you did? Did you look in and make any demand? and if so, what?

A. No, sir; Baker, who was with me, did the talking.

Q. Tell us what was done by you and your men. I want to get before the jury the occurrences in their order, exactly as they occurred.

A. In coming to the house the men were on horseback; when we got to the barn, in order to make it more secure, they were dismounted, a few at a time, and the horses sent away to the rear. The men were stationed around the barn, about thirty feet from it, on three sides. On the front side no men were stationed—the side the door was. The conversation which was held with those in the barn was done by Baker. It was in the first place commenced by him while I was putting the men on guard around the barn, and afterwards conducted by him. I did not think it necessary to change it.

Q. Did you hear it?

A. I heard it and directed it principally.

Q. Relate it.

A. He said to these men in the barn: "We are going to send this young man, on whose place you are found, to take your arms and ask you to surrender." Garrett went into the barn to ask them to come out in order to save the barn from being burnt. They refused to do it, and I believe told him to go out.

Q. Did you hear what he said?

A. No, sir.

Q. Did you hear them threaten to shoot him?

A. No, sir; I did not hear any conversation that occurred between Garrett and Booth.

Q. Tell what you did hear, and what you then did.

A. I heard Baker say to him, "If you don't come out we will set the barn on fire and burn you out." He asked for a few minutes to consider the matter.

Q. Did you give him a few minutes?

A. Yes, sir.

Q. Did you look in yourself?

A. No, sir; it was dark.

Q. What did you do after waiting a few minutes?

A. I told Garrett to pile some brush against the corner of the barn, to make an impression that it was to be set on fire.

Q. Did he pile up the brush?

A. He did; yes, sir.

Q. What did Booth say to that?

A. Garrett told me that Booth came to the corner of the barn and told him if he valued his life to go away from there; that if he did not he would shoot him, or something of that kind.

Q. Did he go away?

A. Yes, sir; I told him he need not put any more stuff there.

Q. That did not have the effect to bring him out?

A. No, sir.

Q. What next in order did you do?

A. Booth said he was a lame man, a cripple; that if we would take fifty men and draw them back one hundred yards, he would come out and fight us all. He wanted that we should give him fair play. Baker said we did not come there to have a fight; we simply came there to make them prisoners, and as such we expected to take them, dead or alive. Booth said, "There is one man in here who wants to surrender pretty bad." Baker told him to hand out his arms and come out. He came to the door and I think said, "Let me out." Baker told him to hand out his arms. He said he did not have any. Baker said, "You carried the carbine; pass it to us." Booth said, "This man has no arms; this carbine is mine; I have got it." I said to Baker not to make any more talk about the arms, but to get one man out. He opened the door; Herold put his hands out, and Baker took him outside the door. I went around the back side of the barn, made a little rope of straw, set it on fire, and thrust it inside on top of of a little pile of straw lying in the corner, which set it on fire.

Q. After it was lighted, could you see Booth very plainly?

A. Yes, sir; when it first lighted up Booth stood about the centre of the barn. As soon as the light attracted his attention he turned round, and came up to the corner where the light was.

Q. What had he in his hand?

A. A carbine.

Q. This carbine here in court?

A. I think that is it.

Q. Do you know whether it is or not?

A. Yes, sir, (after examination;) that is it.

Q. In what position did he hold it?

A. In the position a man would naturally hold it if he was looking for anything to shoot.

Q. Describe the position to the jury.

A. Something like this, (exhibiting position to jury.)

Q. What did he do?

A. He went across the barn, pretty close to the corner, and ran his eye up and down the cracks of the barn to see who made the fire. The light being between him and the outside of the barn, he could not see outside.

Q. You could see him plainly.

A. Very plainly. He then turned his eye on the fire, to see, as I thought, whether he could put it out. He satisfied himself by a glance at it that he could not. It had burned very rapidly, so that the blaze then extended two-thirds to the top of the barn, on the inside. He dropped his carbine and his arms, his countenance changed, and he turned and walked away. As soon as he left the corner of the barn which had been set on fire, he came towards the front door. The front door was nearer to the position where I stood by one side than the other, but the ground about the other was smoother; and, in order to go quick

in the dark, I went around that way. When about opposite the middle of the barn I heard the report of a pistol or of fire-arms—something I judged to be a pistol. I supposed he had shot himself. I went around to the front door, and found it open. Baker had gone in, and when I went to him stood partly bent down, looking at Booth, who lay on the floor, to all appearance dead. I stooped over, looked down at him, and said he had shot himself. Baker said, "No, he did not." Said I, "Where is he shot?" He said he thought in the neck. I reached down and raised up his head, and saw a wound in the neck bleeding. He had the appearance of a man who had put a pistol to his head and shot himself, shooting a little too low; and I said again, "He shot himself." Baker said, "No, he did not." He spoke very positive about it. I thought it a little strange, rather, as if he doubted my word when he said so. However, we carried him out on the grass. When he got out on the grass he began to show signs of coming to life. We had water put in his face and mouth. He made an effort to speak, but was only partially intelligible. I put my head down to his mouth, and understood him to say, "Tell my mother I died for my country." I repeated it over again, and asked him if that is what he said. He replied, or rather indicated, "Yes." From there he was carried to the front porch of Garrett's house, and laid there on a straw tick or bed, I think. I think he said, while he was there, tell his mother he did what he thought was for the best. He wanted to be turned over on his face once, and had a sensation, as I supposed, of choking. He appeared to gasp, and want to get something out of his throat. He saw Jett standing a little way off, on the ground, and said to me, "Did that man betray me?" I said, "We have taken him prisoner."

Q. What is Jett's first name?

A. Willie. I think he was shot very nearly at three o'clock, and died a quarter past seven. He was only rational about forty minutes, or three-quarters of an hour, or such a matter, though he lived some time afterwards.

Q. Will you state what articles you took from him?

A. This is the carbine he had. He had two pistols; I think they were Wheeler & Wilson's; two revolvers; my impression is they were seven-shooting pistols, of some kind, of about six-inch barrel. He had a large bowie-knife, or hunting-knife, and sheath.

Q. Do you know whose make that was?

A. No, sir; the knife has a name on it, but I do not know what it is. He had a diary, some bills of exchange on some bank in Canada, and a compass.

Q. What sort of a compass?

A. A little box compass, like a miniature case, covered with leather, shutting with a hinge.

Q. What kind of a diary?

A. An ordinary pocket-diary, six inches long, perhaps, and two or three inches wide, with a memorandum inside of it.

Q. Do you know for what year the diary was?

A. 1864.

Q. Can you describe whether there were any leaves cut out or whether they were all in?

A. There were some out.

Q. Describe, if you can, how they were cut out.

A. They were cut out with a knife, and cut at different times, I should say.

Q. Were they cut straight or crooked?

A. They were cut very nearly straight down, but one cut was across another, so that the stubs didn't match.

Q. In cutting were they cut straight by a rule or jaggedly and slantingly cut?

A. Some straight and some slanting—not by a rule, but as straight as a man would ordinarily cut with a knife.

Q. Cut at different times?

A. There were only three or four stubs, perhaps, left, that had been cut at the same time. They may have been cut all at once, but by different cuts.

Q. State whether there was in this diary of 1864 any writing at the time?

A. Yes, sir.

Q. Have you seen the diary lately?

A. I have.

Q. Can you state when you last saw it, or about when?

A. I cannot say exactly; it was when I was before the Judiciary Committee, about five or six weeks ago.

Q. State whether when you saw the diary it was in the same condition it was when Booth had it.

A. It was.

Q. Would you know the diary if you were to see it?

A. I should.

Q. Describe the carbine.

A. It was an ordinary Spencer carbine—a seven-shooter.

Q. What other articles?

A. He had some pine shavings, some daguerreotypes, some tobacco, a little Catholic medal, and a pin.

Q. What sort of a pin?

A. A stone set in jet and gold.

Q. Any name on it?

A. Dan Bryant to J. W. Booth. It was a small-sized brilliant.

Q. Was it a diamond or a crystal?

A. I should say it was a crystal.

Q. Was it single or more than one stone?

A. I should say it was only one stone.

Q. Do you know what the lone-star badge is?

A. No, sir; I do not.

Q. Would you know the pin if you were to see it?

A. I would, I think; yes, sir.

Q. Did anything occur to the pin while in your possession?

A. Yes, sir; it was bent in the shank. I sat on it.

Q. How did you sit on it?

A. Just simply sat on it.

Q. You did not sit straight on the pin, did you? Please describe to the jury how you sat upon it.

A. It was loose in my pocket, or with some other articles there. It was a scarf pin, and I suppose three inches long. It was straight when I got it, but when I looked at it, it was bent, and I suppose I did it by sitting on the package.

Q. Please examine the field-glass shown you and see if it is the same field-glass?

A. I do not know; I never saw it until I went to the War Department to get it.

Q. You did not take the field-glass from the house?

A. No.

Q. Do you know who did?

A. Byron Baker, as he is called. L. B. Baker is his name.

(The pin referred to was exhibited and identified by witness.

The diary was also exhibited and identified.)

Q. Just examine it now and say for what year it is, and whether leaves have been cut from it.

A. It is for 1864, and leaves have been cut out.

Q. State whether the diary is in the same condition now it was when you first saw it?

A. Yes, sir.

Mr. Pierrepont read from a copy of entries in the diary; Mr. Merrick having the original and comparing as he read.

The entries read are as follows:

"*Te amo.*"

April 13, 14, Friday, the Ides.

Until to-day nothing was ever thought of sacrificing to our country's wrongs. For six months we had worked to capture. But our cause being almost lost, something decisive and great must be done. But its failure was owing to others who did not strike for their country with a heart. I struck boldly, and not as the papers say. I walked with a firm step through a thousand of his friends; was stopped, but pushed on. A colonel was at his side. I shouted *Sic semper* before I fired. In jumping broke my leg. I passed all his pickets. Rode sixty miles that night, with the bone of my leg tearing the flesh at every jump.

I can never repent it, though we hated to kill. Our country owed all our troubles to him, and God simply made me the instrument of his punishment.

The country is not

April, 1865,

what it was. This forced union is not what I have loved. I care not what becomes of me. I have no desire to out-live my country. This night (before the deed) I wrote a long article and left it for one of the editors of the National Intelligencer, in which I fully set forth our reasons for our proceedings. He or the gov'r——

Friday, 21.

After being hunted like a dog through swamps, woods, and last night being chased by gunboats till I was forced to return wet, cold, and starving, with every man's hand against me, I am here in despair. And why? For doing what Brutus was honored for—what made Tell a hero. And yet I, for striking down a greater tyrant than they ever knew, am looked upon as a common cut-throat. My action was purer than either of theirs. One hoped to be great. The other had not only his country's, but his own wrongs to avenge. I hoped for no gain. I knew no private wrong. I struck for my country and that alone. A country that groaned beneath this tyranny, and prayed for this end, and yet now behold the cold hand they extend to me. God cannot pardon me if I have done wrong. Yet I cannot see my wrong, except in serving a degenerate people. The little, the very little, I left behind to clear my name, the government will not allow to be printed. So ends all. For my country I have given up all that makes life sweet and holy, brought misery upon my family, and am sure there is no pardon in the Heaven for me, since man condemns me so. I have only heard of what has been done, (except what I did myself,) and it fills me with horror. God, try and forgive me, and bless my mother. To-night I will once more try the river with the intent to cross. Though I have a greater desire and almost a mind to return to Washington, and in a measure clear my name—which I feel I can do. I do not repent the blow I struck. I may before my God, but not to man. I think I have done well. Though I am abandoned, with the curse of Cain upon me, when, if the world knew my heart, that one blow would have made me great, though I did desire no greatness.

To-night I try to escape these blood-hounds once more. Who, who can read his fate! God's will be done.

I have too great a soul to die like a criminal. O, may He, may He spare me that, and let me die bravely.

I bless the entire world. Have never hated or wronged any one. This last was not a wrong, unless God deems it so, and it's with Him to damn or bless me. And for this brave boy with me, who often prays (yes, before and since) with a true and sincere heart—was it crime in him? If so, why can he pray the same?

I do not wish to shed a drop of blood, but "I must fight the course." 'Tis all that's left me.

(A sheet, seeming to have been cut from the diary and written over with pencil, handed to witness.)

Q. Do you remember whether this letter was in the book?

A. I do not know about that.

Q. Do you know anything about these letters written on the leaves of the diary?

A. No, sir.

(A bowie-knife and sheath and a compass were shown to witness, and identified by him as having been taken from the body of Booth. A piece of map was also identified by witness as having been taken from Herold. The diary and pin were submitted to the jury and examined by the jurors respectively.)

Cross-examination by Mr. BRADLEY:

Q. On the trial before the military commission, to which you have referred once or twice, were you interrogated as to all the articles taken from Booth?

A. No, sir.

Q. Were you not then asked what things were found upon him?

A. I think I was shown things, and asked to say whether they were found there, but I am not certain about it.

Q. You were not asked, then, upon that trial, whether these things shown to you were all the articles found upon his body?

A. I think not.

Q. Can you tell whether you spoke of the diary found upon him at that time, or not?

A. I have no recollection of it.

Q. Do you mean that you have no recollection of having spoken of it, or of whether you did or not?

A. I do not know whether I did or not.

Q. To whom did you give that diary with the other articles?

A. To the Secretary of War, Mr. Stanton.

Q. Is your recollection distinct upon that point?

A. I gave him all the things I brought up.

Q. And among them that diary?

A. And among them that diary.

Q. And on trial before the military commission nothing was said of that diary?

A. Nothing that I recollect. I am unable to state certainly upon that point.

Q. Do you recollect whether you examined the diary carefully before you gave it to Mr. Stanton?

A. Yes, sir; I examined it carefully on the steamer coming up the Potomac river.

Q. And you are now under the impression it is in the same condition it was then?

A. I am.

Q. I wish you to look at the margins of the cut leaves of the diary, and say whether or not there are several leaves cut out at a later period than others; whether the last cutting does not appear much more recent than the other?

A. I cannot say that it does.

Q. Did you count the leaves that had been cut out?

A. No, sir.

Q. Did you make any memoranda at the time as to the condition of the diary when you received it?

A. No, sir.

Q. How long did you have it in your possession?

A. From about 6 o'clock in the morning till about 4 o'clock in the afternoon.

Q. Did you then deliver it to the Secretary of War?

A. Yes, sir.

Q. When did you see it again?

A. I think I never saw it again until I was subpœnaed here before the Judiciary Committee.

Q. Will you turn to your memorandum, and see when you were before the Judiciary Committee?

A. I do not know certainly that I can tell.

Q. Did you go back home?

A. No, sir.

Q. Have you been here ever since?

A. I have been here ever since. I got into the city on Sunday morning, and was examined on Tuesday morning. I think it is six weeks yesterday since I came to the city; I am not certain; I have no data that show when I left home, or the date I arrived here.

Q. Has there been any other examination in reference to this diary since you came here?

A. Yes, sir. I have seen it at Judge Holt's office.

Q. When was that?

A. About the 16th of this month.

Q. Who were present at that time?

A. An officer who belongs to the Judge Advocate General's office; I think Colonel Barr is his name.

Q. Any one else?

A. I think not.

Q. The diary was produced?

A. Yes, sir.

Q. Did you examine it carefully?

A. Not very; I had examined it very carefully before the Judiciary Committee, both in Judge Holt's possession, and before the committee. I was asked there to read it over and examine it carefully. I did so twice.

Q. Did you examine it prior to going before the Judiciary Committee?

A. Yes, sir.

Q. Did you take that diary from Booth, or did somebody else take it and hand it to you?

A. I think I took it.

Q. Was that at the house or barn?

A. It was at the house.

Q. Have you stated, as well as you can recollect, all that Booth said on that occasion?

A. I think he asked for water, and that he wanted to be turned over on his face. I think he said something about his throat being stopped up. I asked him to put out his tongue. I did not know but he might be bleeding inside He did so, and I told him there was no blood there.

Q. Do you recollect Booth's saying Herold had nothing to do with it?

A. No, sir.

Q On your examination before the military commission, when you stated that Booth said "here's a man who wants to come out," did you state "I think he added: 'and who had nothing to do with it'"?

A. I think I said on the trial before the military commission that such a thing might have been said. I recollect hearing afterwards that it was said.

Q. You do not remember, then, when Booth said Herold wanted to get out, that he added, "and who had nothing to do with it?"

A. I do not remember what I said.

Q. How do you identify the various articles in reference to which you have testified—for instance, that carbine? Are there not thousands like it in use in the army?

A. Yes, sir.

Q. Did you not have very much the same carbines in the hands of the men of your command?

A. No, sir; we had the Henry rifle in our regiment.

Q. They were repeating shooters, were they not?

A. Yes, sir.

Q. But carbines like these were in common use in the army?

A. Yes, sir.

Q. What would you call this carbine?

A. A Spencer.

Q. I think you said there was a mark on it that you put on?

A. There is a saddle mark on the breech.

Q. Did you put that there?

A. No, sir.

Q. I ask you if it is not a very common thing for a carbine carried in the saddle to receive the marks of the saddle?

A. They are very often rubbed—yes, sir; but I took this mark to identify it by instead of putting another on.

Q. That mark attracted your attention, and you identify it by that?

A. Yes, sir.

Q. Can you recollect whether the mark was apparently made artificially, or whether it was apparently made by the saddle?

A. I should say it was an accidental mark made in ordinary wear; but I do not know.

Q. Can you describe it?

A. It is a mark that looks as if it might have been made by rubbing down against a hard portion of the saddle in one place, then rubbed in another, until the two, three, or four places are united together.

Q. These carbines are carried suspended from the shoulder, are they not?

A. They are usually carried suspended by shoulder straps, or a sling.

Q. Did I understand you to say this carbine had this strap on when you took it?

A. I do not know whether I said so. It had some kind of a strap.

Q. Had it this strap on it?

A. I do not know whether it is the same one or not.

Q. Now what is there by which you identify this compass?

A. The tallow or candle grease inside it, and the shape of the box.

Q. How do you identify the knife?

A. The knife has a spot of rust on it, about two-thirds the way from the hilt to the point, right where the bevel of the knife commences at the end. It was said to be blood, but I never thought it was myself. It is the same shape and style of knife.

Q. Have you not seen other knives like it?

A. Yes, sir.

Q. Have you not seen a great many like it?

A. No, sir; only a few.

Q. You put no mark on it?

A. No. I have no means of identifying it except by the description I have given.

Q. You did not look at the name of the maker?

A. I do not know that the name of the maker is on it. I have looked

at it since and noticed the words "Rio Grande camp-knife" on it. I have no means of identifying it except what I have stated, and my general recollection of the style of the knife.

Q. What became of the horse Booth rode?

A. I do not know anything about it.

Q. You did not see his horse at all?

A. He had no horse that I know of when I found him. I heard of none.

Q. You did not hear him say anything about it?

A. No, sir.

Q. You did not hear him speak of having killed his horse?

A. Nothing.

Q. You say you had certain articles placed before you on the trial before the military commission for identification—you had the knife, pair of pistols, belt, holster, file, pocket compass, spur, carbine, cartridges, and bills of exchange shown you?

A. I think so.

Q. But not the diary?

A. I have no recollection of seeing it, or of having anything said to me about it.

Q. Before your examination, when you were called on to ascertain what you knew, was anything said about it?

A. Nobody ever said anything to me about it.

Q. Nobody ever said anything to you about the diary after you gave it to Mr. Stanton?

A. Not a word.

By Mr. PIERREPONT:

Q. What do you know about that carbine being loaded?

A. It had seven cartridges in the chambers, and one in the barrel. I took them out in the presence of Mr. Stanton.

By Mr. MERRICK:

Q. Did you deliver all these articles over to the Secretary of War?

A. No, sir. I only delivered such as were shown with the diary. The others came up on the boat with the soldiers, and in their charge.

Q. What did you deliver personally?

A. The diary and those things that were shown with it.

Q. The papers that were in the diary?

A. Yes, sir; with this little piece of a map, shavings, compass, and pin. The carbine, pistols, and knife came with the soldiers.

Q. I understood you to say that this diary came into your possession about six o'clock in the morning; at what time was Booth shot?

A. I think it was a quarter past three, or a quarter of four. I don't know precisely.

Q. When were these articles taken from his person?

A. About seven, or a few minutes before.

Q. Who took them from his person?

A. I took most of them, I think. I am not certain about that.

Q. Do you know who took the diary from his person?

A. I think I did.

Q. Who came up on the boat with you?

A. Not any one.

The court here took a recess for half an hour.

AFTERNOON SESSION.

WILLIAM E. WHEELER—residence, Chicopee, Massachusetts—sworn and examined.

By the DISTRICT ATTORNEY:

Q. What is your occupation?

A. I am in the livery business at present.

Q. State if you knew J. Wilkes Booth, the actor.

A. I was not personally acquainted with him.

Q. Did you know him by sight?

A. Yes, sir.

Q. State when you saw him.

A. I saw him on the stage in Springfield, Massachusetts, playing. That was the first time I ever saw him. Afterwards I saw him in Montreal.

Q. When was that?

A. That was some time in October or November, 1864.

Q. Did you see him after that, and previous to the assassination of the President?

A. No, sir.

Q. That is the last time you saw him?

A. I never saw him but once in Montreal.

Q. Will you state when, as near as you can recollect, in what part of the city, and in what company you saw him?

A. I cannot tell the date. I saw him come across the street from a broker's office, or near a broker's office, to the St. Lawrence Hotel, in company with another man; who the man was, at that time I did not know.

Q. Did you ever speak to that other man afterwards?

A. No, sir.

Q. He was not pointed out to you at that time——

Mr. BRADLEY. Never mind; that would not be evidence.

Q. Did you ever learn the name of this person?

Mr. MERRICK. Stop; that is not a proper question.

The COURT. The witness must only state what he knows of his own knowledge.

Q. Was that the only time you ever saw Booth?

A. That is all I can say about him, unless I can speak of the man being pointed out to me.

Q. Will you describe the person in whose company you saw him at that time?

A. He was a large man, thick-set, with a flushed, red face.

Q. What was the color of his hair?

A. I cannot remember as to that. It was rather dark, I think.

Q. Did you ever see that man afterwards?

A. I did, or one that I took to be the same man.

Q. Where did you see him?

A. Walking on the street one evening; he was pointed out to me, and his name——

Mr. MERRICK. No matter what his name was.

Q. You never spoke to him?

A. No, sir.

By Mr. BRADLEY:

Q. You can say whether it was or not this gentleman (the prisoner) sitting by me?

A. I never saw him, until yesterday, in my life.

LUTHER BYRON BAKER—residence, Lansing, Michigan—sworn and examined:

By the DISTRICT ATTORNEY:

Q. What is your present occupation?

A. Farming.

Q. State how you were employed in the year 1865, and previous thereto?

A. I was employed by General Baker, provost marshal of the War Department.

Q. In what capacity?

A. As a detective.

Q. Had you been in the army? and if so, in what capacity?

A. I had been quartermaster of the first District of Columbia cavalry.

Q. Will you state if you were one of the parties who went in pursuit of Booth, after the assassination of the President?

A. I was.

Q. Will you be kind enough to state to the jury, in your own way, all that occurred from the time you left the city in pursuit of Booth until his capture. First state under whose command you were.

A. I was under the command of General Baker.

The DISTRICT ATTORNEY. Go on and state now the whole history.

WITNESS. Will it be necessary to commence from my first search? I went on three distinct trips.

Mr. PIERREPONT. No, sir; commence and state the particulars connected with the trip which resulted in the capture of Booth.

The DISTRICT ATTORNEY. That will be sufficient—to state all that occurred during that trip. Colonel Conger, I believe, had command of the party.

Mr. BRADLEY. Never mind about that, Mr. Carrington.

WITNESS. The date that I left Washington has now escaped my mind; but I will state that I left Washington under the orders of General Baker, in company with Colonel Conger, Lieutenant Doherty, and twenty or twenty-five soldiers detailed for the purpose. I received my orders from General Baker. We were to go to Belle Plain with this command and search for Booth and Herold, as he was satisfied they had crossed the Potomac at or near Mathias Point. I obtained transportation for our command to Belle Plain. We arrived there about 10 o'clock the same evening, disembarked, and went upon the bluff. From that time Colonel Conger took the lead, as he stated he was acquainted with the country, and knew the direction that we wished to take. Colonel Conger and myself, under assumed names, went in advance of the command, perhaps, from a half mile to a mile in advance—making calls, inquiring the way, and assuming that we had been separated from a party with which we had crossed the Potomac and were pursued by the Yankees, and wished to find the remainder of our party. We retained these characters until daylight, and made, perhaps, fifteen or twenty calls during the night, the command following at a convenient distance, and we communicating with them through some orderlies, who were with us, or kept within reach. At daylight we threw off these characters and partook of some refreshments at Dr. Ashton's, I think, who lived near the Rappahannock river. Our party then separated, Colonel Conger and myself taking six or eight soldiers with us, Lieutenant Doherty taking the remainder with him. He, I think, went to the right, down the Potomac, and we went down the Rappahannock river. The party with which I was, reached Port Conway before Lieutenant Doherty's party, but they soon came up. This was about 3 or 4 o'clock in the afternoon. We went into the yard of a gentleman by the name of Turner, and took some refreshments, while the soldiers and horses were resting. Leaving Colonel Conger in the hall, I went to the ferry, at Port Conway, telling Colonel Conger that I would go and ascertain if I could get any information there, and would cross the river if necessary. I went immediately to the ferry. The first man that I came across was a colored man. I did not succeed in getting any information from him, and turned to the right and saw a man and his wife sitting by their door. Their house was perhaps four or five rods from the ferry. I went with them and asked them if they had seen within a day or two any citizens passing that way; finally I asked them if they had seen a lame man. They said they had; and from their description, I concluded it must have been Booth and Herold. I then took a likeness of Booth from my pocket, and asked this fisherman (Rollins was his name) if that

picture resembled the lame man? He said it did, except the moustache, which the lame man did not have. I then took Herold's picture from my pocket, showed it to him, and he said he thought that resembled the small man who carried the carbine. I then learned from Rollins, that the day before, these parties, Booth and Herold, came to the ferry about 9½ o'clock in the morning. They were brought there by a colored boy by the name of Charley Lucas. Booth paid Lucus ten dollars for bringing him from Dr. Stewart's to the ferry. While they were there, Lucas left them and returned. Herold came to this Rollins, the fisherman, and tried to engage him to take them across the ferry. They said they had escaped from the Yankees, and were anxious to get across. Rollins said he could not just then, for he had to go and attend to his nets. They urged him very strongly, and offered him ten dollars in gold if he would take them across immediately. He persisted in refusing to do it then, but said that he would in the course of an hour, and then went away to attend to his nets. During that time three confederate soldiers came down and entered into conversation with Booth and Herold. Rollins gave their names as Jett, Ruggles, and Bainbridge. Rollins soon returned, when Herold came to him and said that if it would make no difference with him, he need not take them across; that they had fallen in with friends and they would not trouble him any further. During this time Herold had placed the carbine inside of Rollins's house for safe-keeping, together with a blanket that was rolled and strapped up. He took these from the house, and they went away in company with these confederate soldiers, who had hailed the ferry.

By Mr. BRADLEY:

Q. You say he left the carbine and blankets at Rollins's house?

A. He left them there for safe-keeping until Rollins should come back. He then took them and left. As soon as I received this information I sent word immediately to Colonel Conger, at Mr. Turner's. Lieutenant Doherty came to the ferry shortly after I came, and I told him I had important information, and the sooner the command got across the river the better, and I hailed the ferry. My orderly went for Colonel Conger, and he soon came down, when we were ferried across the river, taking this fisherman, Rollins, along as a guide. At his request we arrested him in order to avert suspicion. We crossed the river and left the impression there that we were going to Fredericksburg to join our command. We proceeded towards Bowling Green, which Rollins told us was fifteen miles from the ferry.

Mr. BRADLEY. I should like to know how much longer this narrative is going to continue. I do not see the object of it, and it is really taking up a great deal of precious time.

The COURT. That is a fact, it is. Just come to the place where you found Booth.

Mr. BRADLEY. I do not want to go all over Caroline county.

Mr. PIERREPONT. We do not think this material, your honor, and hope the witness will act upon your suggestion, and come at once to Mr. Garrett's house, the place, I believe, where Booth was captured.

WITNESS. On reaching Bowling Green, we found Captain Jett. Upon information received from Captain Jett, we proceeded to the Garrett house.

Q. Did he go with you?

A. Yes, sir; he accompanied us as far as he could. There were two gates. I went through the first to the second, holding it open for the command to go through. I then mounted my horse and went with them to the house. I came up to a side door and dismounted to enter, when an old man put his head out of the window and wanted to know what the matter was.

Mr. PIERREPONT. State what time this was.

A. This was, I think, 12 o'clock at night, and quite dark. I said to the old

gentleman, "Never mind, light a candle, and open the door." He opened the door and I stepped inside. Shortly after he came on the porch with a candle. I placed my hand on his shoulder, and, presenting my pistol, asked him where those two men were who were stopping with him. He seemed very much frightened, and unable to answer. He finally said that they were not there; that they had gone to the woods. I told him I knew better; that he must not tell me any such stuff. At that time Colonel Conger came into the door and threatened to hang him on one of the trees, if he did not tell the truth. About this time a young man in confederate uniform entered. He says, "Gentlemen, don't injure father; I will tell you all about these men." Hearing that, I let go of the old gentleman. This person proved to be young Garrett. He says, "They are in the barn." I then took young Garrett in charge. Colonel Conger went out to throw the men about the barn, and I proceeded with Garrett there. When I arrived, the cavalry were arranging themselves about it. I told Garrett he must go in and demand the arms of the persons in the barn, as we found them in his custody, and demand their surrender. I then unlocked the barn, and he went in. I heard some low conversation. Among other things I heard some one say to Garrett, "You have betrayed us; get out of here." Garrett soon came to the door again, anxious to get out. When he came out I locked the door, and retained the key after that myself. It was then decided that the men must be dismounted, in order to effectually secure the barn, as the horses would not stand the fire, we having determined to fire the barn, in case they did not surrender. I made a proposition to the persons in the barn that they should hand out their arms to Mr. Garrett, in whose possession we found them, and surrender. I told them that we had a force of fifty cavalrymen about the barn, armed with carbines and pistols, and it was useless for them to resist. I also told them if they did not surrender we should fire the barn, and thus have a bonfire and a shooting match. Booth says, "Captain, this is hard; we are guilty of no crime." I wont be sure that he used the plural; he may have said "he" was guilty of no crime. He made a proposition to me to have me draw my men up twenty yards from the door, and let him come out and fight the whole command. I told him that we had not come there for that purpose; that we had come to capture him, and had him secure to all intents and purposes. I repeated the warning, that if he did not surrender in a few moments we should fire the barn. This conversation, and the preparations about the barn, must have occupied three-quarters of an hour. Booth finally said, "There is a man here who wishes to surrender." I then went to the door and unlocked it, telling him he could come out if he would bring his arms. A voice from the inside near the door said, "I have no arms; I know nothing about this man." Another voice then said, "This man is guilty of no crime; he has no arms; they are mine, and I shall keep them." I still insisted that he should bring out the carbine, which I had ascertained he had carried across the river. Seeing that it was impossible to get out any arms, I opened the door, and told Herold to put out his hands. He did so, and I drew him out. Garrett stood near me, and I think took hold of him. I then turned him over to Lieutenant Doherty, who was near by, and locked the door again. Colonel Conger came near by and said, "We had better fire the barn." I said "The quicker the better." I told Booth that he could have two minutes more; that the time for action had come. He says, "Well, my brave boys, you can prepare a stretcher for me." Then he made another proposition to me; he says, "Captain, I consider you to be a brave and an honorable man; now let me come out and fight your whole command." I made no reply to this last proposition. He then remarked, in a loud clear voice, "One more stain on the old banner." The fire had now sprung up in the barn from the right-hand side, I think. I unlocked the door, but held the lock in the hasp for a moment, and then opened it and looked in. The inside of the barn was lighted up so that everything could be distinguished very

readily. I saw Booth going from the centre of the barn towards the fire, with his carbine under his right arm ready for use, and one crutch. He came or went near the fire, looking along the crevices of the barn, as though seeking to discover the one who had kindled the fire. He then stopped as though he would pick up something to throw on the fire. That was the impression I had. He did take hold of a piece of furniture; what it was I do not know, but it had legs. He seemed, however, to abandon the idea in a moment, and turned and looked all around the barn, until his eye rested upon the door as I was holding it open. He wheeled round and started towards it, dropping his crutch. He had approached, I should think, to within ten or fifteen feet of the door, when I heard the report of a pistol. Booth instantly threw up his hands and fell. I then jumped into the door, threw it open, and went immediately to the spot where he lay. Not knowing that he was mortally wounded, I caught him by the arms in the first place to secure him, but found that he was powerless. I then took the pistol from his hand, and observed the carbine lying rather between his legs; I then threw back his coat and saw that he had a belt with a bowie-knife in it, and, I think, a pistol. Garrett came in, I think, immediately after me and ran by me, calling upon the soldiers to extinguish the fire. Conger also came in and knelt down near where I was over the body of Booth, and remarked, "He shot himself." This I disputed, saying I saw him the whole time, and that some one had shot him, and that the man who did should go to Washington under arrest. Conger then left and went to assist the soldiers in extinguishing the fire, which was making rapid progress. The fire was rendering it so warm that when he came back I proposed taking Booth out of the barn, which we did, with the assistance of some soldiers, and laid him near a tree. I took a cup, which I always carried, from my pocket, and called for some water. Then threw some in his face and put some in his mouth, which he blew out, at the same time opening his eyes, and moving his tongue as though he would say something. I distinguished these words in a very faint whisper: "Tell mother, tell mother." He then seemed to swoon away again. The barn was now burning so fiercely, that it caused the heat to become oppressive in the close position we then were to it, so we carried Booth to the piazza of the house, when the ladies got an old mattress, on which we laid his head. They also brought some ice-water. I then took a cloth and washed his face and his wound. In the mean time a physician had been sent for. About this time he again came to himself, opened his eyes, and said: "Kill me." I said, "No, Booth." He looked at me with a great deal of surprise, as I supposed at my knowing his name. I added: "We did not wish to kill you, and we hope you will recover; you were shot against orders." Says he, "Kill me, kill me." Then he repeated what he had said at the barn: "Tell mother I die for my country; I have done what I thought was for the best." He then made an attempt to cough. Colonel Conger, who was near by, pressed him near the throat with his hand, and told him to put out his tongue. He put it out, and Colonel Conger says, "There is no blood on it," which seemed to satisfy him. He then exclaimed, "My hands." I took one of his hands, held it up before him, and washed it with ice-water. He looked at it and says, "Useless, useless." I then dropped it. Happening to make some inquiry of Colonel Conger as to Captain Jett, as to where he was, Booth looked up and said, "Did Jett betray me?" Thinking it would be no use to say anything about Jett, I told him not to mind about Jett. I think this was all he said before he died. The physician soon arrived, and I told him I wished he would tell me how long Booth would live, for if he was going to live more than two hours, I would take him as he was to Washington. The physician produced a box of surgical instruments and undertook to probe the wound. I told him that that was of no use; that the ball went through. He then looked on the other side of his neck and remarked that he saw it had gone through. Booth's face shortly became a great deal disfigured. He seemed to be suffering great pain, and the physician gave

it as his opinion that he would die in the course of an hour. Colonel Conger said he wouldn't wait, but would take his effects and go to Washington, as it was important the information should reach there. I then took everything from Booth's pockets, which articles consisted of a diary, a pocket knife, some matches, some shavings that seemed to have been whittled up to kindle a fire with, and a pocket compass. I would say that this compass had the droppings of a candle all around it, as though it had been used in the night The articles I have mentioned are all of the articles that I remember taking from his person except his arms.

Q. Now describe the arms.

A. There was a pin which Colonel Conger took from his undershirt as we tore his collar open.

By the DISTRICT ATTORNEY:

Q. Examine these articles, (handing witness various packages,) and state if they are the ones that you took from the person of Booth at that time.

A. (Holding up a large bowie-knife,) that is the knife, I am positive. This is the compass, and this is the pin, though it was not in this shape. (These articles are the same as those identified by other witnesses.)

Q. That pin was straight, was it?

A. Yes, sir. It pinned his undershirt. This map I do not know anything about. We took something of that kind from Herold. I did not take it myself. This I should think was the diary. (Holding in his hand the book identified by other winesses as such.)

Mr. PIERREPONT. Examine it, so that you can be sure.

Mr. BRADLEY. Did you examine it then?

WITNESS. I had this book in my hand as long as I have now, about a minute, and then handed it over to Colonel Conger.

By the DISTRICT ATTORNEY:

Q. Does it look like the book?

A. I think it is the book.

Q. Examine that carbine and see if you identify it.

A. I did not bring the carbine to this city; I had it in my hand. It was either this one, or one very much like it. Colonel Conger had charge of that.

Q. Did Booth have that in his possession?

A. Yes, sir; it lay right between his legs when he fell. I saw him using it in the barn, holding it as if ready to shoot as he went toward the fire.

Q. State whether you know anything about this paper being connected with the diary. (Handing witness a slip of paper with pencil writing on it.)

A. About a week or ten days after the assassination I was sent back by General Baker over the same track that we had previously taken for information and for witnesses. From this colored boy Lucas, who brought them to the ferry, I ascertained that while Booth was at his house the night before, he took out a book—from the description of the boy, I should think it was his diary—and wrote a note.

Q. You say at his house; at whose house do you mean?

A. At the darkey's house.

Mr. BRADLEY. I object to that, if your honor please. What he ascertained from the darkey is not evidence.

The COURT. No information that he got from the colored boy is evidence.

Mr. PIERREPONT. No, sir; it is not. We do not care anything about it.

Q. State how you came into possession of this leaf.

A. I found it in the possession of one Dr. Stewart, who lives about ten miles from the Potomac, on the road that Booth and Herold took.

Q. The top reading of it is torn off. What do you know about that?

A. I met Dr. Stewart and told him I had understood that he had a note which was written by Booth. He said he had. I told him who I was, and that I wished to get it.

Mr. BRADLEY. Stop one moment. Is Booth's name signed to it, or is it in his handwriting? I apprehend, your honor, that Dr. Stewart's declarations cannot be given in evidence here.

The COURT. No, sir.

Mr. PIERREPONT. We do not want it.

Mr. BRADLEY. Then I hope counsel will interpose to prevent the witness stating what he admits is not evidence. I do not wish to be constantly interrupting him.

Q. State where you got that from.

A. It was handed to me by Dr Stewart. His wife came up and tore this piece that is torn off from it; tore off Dr. Stewart's name. I saw what the name was before she tore it off.

Q. Will you take that paper and state what you know about it in connection with the diary?

A. I brought it to this city. General Baker and myself went to the War Department and took and compared this leaf with the diary, or Major Eckert did in our presence.

Q. Who do you say made the comparison?

A. I think, Major Eckert, the Assistant Secretary of War.

Q. Can you find where it is torn off?

A. I think so. I saw this leaf compared with the diary, and the conclusion arrived at was that it belonged to the diary.

Witness here pointed out to the jury the place where it was torn off.

Mr. PIERREPONT. I now propose to read a copy of what is written on that leaf, as the original is somewhat blurred, and therefore a little more difficult to read from.

Mr. BRADLEY. Let us see first if there is anything about the copy or the original that is admissible.

Mr. PIERREPONT. Do you require us to prove the handwriting?

Mr. BRADLEY. I require you to prove the authenticity of any paper introduced as evidence in this case.

Mr. PIERREPONT. We will prove the handwriting.

The COURT. That would be a more orderly way of proceeding.

Mr. PIERREPONT. We have merely shown what Dr. Stewart said about it.

Mr. BRADLEY. Dr. Stewart cannot say a word about it.

Mr. PIERREPONT. Undoubtedly we are obliged to prove the handwriting if you require it, but I did not know that it was necessary, inasmuch as it seems to be exactly the same handwriting as the other. I want you to hand this leaf to the jury, and let them see whether it fits or not. That is a matter of the sight.

(The book and leaf were then handed to the jury for inspection.)

Q. Do you know anything of the other leaf on which there was writing?

A. I know nothing of any other leaf.

Q. Examine that field-glass, if you please, and state if you identify it.

A. I think it was in the latter part of July, after the assassination, that I first saw this field-glass. I saw it at the Garrett place, where Booth was captured. I was in among the ruins of the barn, poking among the ashes to ascertain if I could find any of the remains of the field-glass which I had been told——

Mr. BRADLEY. Never mind what you had been told.

WITNESS, resuming. I found the remains of a cartridge-box; some lead, which seemed to have been melted, and a little wad. While I was there I ascertained from a small boy, who belonged to the place——

Mr. BRADLEY. Stop.

The DISTRICT ATTORNEY. Don't state what the boy said. Just state what you did after having this conversation with the boy.

WITNESS. I then asked Mr. Garrett if he had in his possession a field-glass which Booth brought there.

Mr. BRADLEY. Don't state what he answered.

Mr. PIERREPONT. Just state what you did after the conversation with Mr. Garrett.

WITNESS. During a conversation with him I ascertained ——

The COURT. Don't state what you ascertained from this conversation.

By Mr. PIERREPONT:

Q. You ascertained something that led you to do what?

A. To go in search of the glass.

Q. Did you find it?

A. Mr. Garrett and myself found it about nine miles from Garrett's place.

Q. Was it the same Mr. Garrett who was on the stand here?

A. Yes, sir. It was secreted in a chamber, in a clothes chest. I took it and brought it to Washington. General Baker and I took it to the War Department, and there it was left.

Q. And this is the same glass?

A. This is the glass, as far as my judgment goes.

Cross-examination:

By Mr. BRADLEY:

Q. Is there any mark on that glass by which you identify it?

A. Yes, sir.

Q. What is it?

A. This thumb-screw and the label on it, I noticed as being peculiar.

Q. You never saw one before?

A. No, sir; I never saw one like it before.

Mr. PIERREPONT. Just show that to the jury; I want them to see it.

Mr. BRADLEY. Never mind. You will have to bring it nearer to the party than that to make it evidence. There is nothing whatever to connect it with these parties.

The ASSISTANT DISTRICT ATTORNEY. We think there is.

Mr. PIERREPONT. In our view it is evidence enough to go to the jury.

Mr. BRADLEY. The witness is now under my cross-examination; when I am through you can take him.

Q. You never saw one before like it?

A. No, sir.

Q. Nor since?

A. No, sir.

Q. At whose house did you find it?

A. I do not remember the name of the farmer, but about nine miles from the Garrett place. I think they were relatives of the Garretts.

Q. Was it in the river or not?

A. It was not.

Q. In what direction?

A. In the direction of Fredericksburg, rather up the river.

Q. On the main road from Port Royal to Fredericksburg?

A. No, sir; no main travel on that road.

Q. Are you quite sure Colonel Conger did not take that glass from Booth?

A. Yes, sir.

Q. Can you enumerate what articles Conger did take from him?

A. He took the diary, his compass, I think, a pocket knife, some matche

and shavings. I took some of these articles from him. We were both at work over him getting the things out of his pockets, as he was not dead. One held him up, and the other took the things from his back coat-pocket.

Q. Is what you have stated all that you recollect having taken from his person?

A. All except his arms.

Q. I mean that Colonel Conger took from him?

A. That is all I recollect.

Q. What became of the pocket knife?

A. I have no means of knowing. The things were taken by Colonel Conger immediately to the War Department. I am not positive in regard to the pocket knife. It is an impression I have.

Q. Do you recollect whether Booth said more than what you have stated to us?

A. I think he did, in the barn before he was shot.

Q. After he was shot?

A. I do not recollect anything more than what I have stated.

Q. Where were you during the "conspiracy trials," as they are called?

A. I was in this city.

Q. Were you called as a witness?

A. I was not.

Q. Were you examined beforehand by any person connected with it?

A. I was not.

Q. Were you inquired of as to what you knew about it?

A. I had given my testimony to Judge Holt on board of the gun-boat on which Booth's body was placed when it reached the city.

Q. Do you recollect stating in substance at that time, or at any other time, in addition to what you have stated here, that Booth said that the plan had been conceived by him; that no other person was in it but himself and one more, or words to that effect?

A. No, sir; I am positive I never made that statement to anybody.

Q. Do you know a lady in this city by the name of Mrs. Holahan?

A. I do not personally; I remember of having such a lady in charge as a witness, and I think accompanied her to the penitentiary during the conspiracy trial.

Q. Do you recollect of saying in her presence, that when Booth was dying he said, in substance, that the plan was conceived by himself, and that there were only two persons in it?

A. No, sir.

LYMAN S. SPRAGUE—residence, Washington—sworn and examined.

By Assistant District Attorney WILSON:

Q. Where, and in what capacity, were you engaged in the year 1865?

A. I was at the Kirkwood House; employed in the office.

Q. Examine this (handing witness a leaf of a large book with various names written on it) and state what it is.

A. It is a leaf cut out of the register of the Kirkwood House, April 14, 1865.

Q. Let me call your attention to a name that was entered there on the 14th.

A. George A. Atzerodt, Charles county.

Q. Do you know the person who entered that name?

A. I do not.

Q. Did you ever see him?

A. No, sir.

Q. What room did he have?

A. No. 126.

Q. Describe, if you please, the relative position of that room with the one occupied by the Vice-President, Johnson.

A. Room 126 is on the third floor, in the new part, over the dining room; next to the last room of this new addition. President Johnson's room was No. 68, on the second floor, facing on Twelfth street. It is the first room as you go up stairs from the office.

Q. Was this room No. 126 nearly over it?

A. No, sir; very far from it; it is nearly 125 feet from where President Johnson's room was at the time.

Q. What means of communication were there?

A. Not any, without going up stairs or coming down, as the case may be.

Q. Did you visit that room on the 15th of April?

A. I did.

Q. State what you found.

A. I went there with detective John Lee, and he found a revolverunder a pillow of the bed.

Q. Were you there when any other things were found?

A. No, sir; I was not. I came down stairs before they were found; I was called down at the office.

By Mr. BRADLEY:

Q. The room that Atzerodt occupied was not directly over Vice-President Johnson's room?

A. No, sir.

Q. But at the other end of the long back building?

A. Yes, sir.

SAMUEL K. CHESTER—residence, New York city—sworn and examined.

By Assistant District Attorney WILSON:

Q. State where you resided in April, 1865, and what was your occupation.

A. I resided in New York city, and was an actor at that time.

Q. State whether or not you were at that time acquainted with J. Wilkes Booth.

A. I was.

Q. When and where did you last see him?

A. The last time I saw him was on Friday, one week previous to the assassination. I was with him nearly the entire afternoon. We separated at the corner of Fourteenth and Broadway, in New York city.

Q. Had you seen Booth a day or two prior to that?

A. No, sir; I do not think I had. I may have seen him, but I do not recollect.

Q. Did you know where he stopped? and if so, state.

A. No, sir; I do not know where he stopped.

Q. Have you any means of knowing how long Booth remained in New York at that time?

A. He must have gone away that night.

Q. Do you know when he arrived there?

A. No, sir.

Q. Do you know how many days he was there?

A. I do not.

Cross-examination by Mr. BRADLEY:

Q. Had you any conversation with him that day, or any day previous?

A. I had on that day.

Q. How long before this last time had you seen him?

A. I cannot now remember.

Q. Did you see him in the month of January or February?

A. Yes, sir. I think I saw him in those two months.

Q. Did you have any conversation with him at this time, the 7th of April?

A. Yes, sir.

Q. You saw him in January, February, and April, and held conversation with him on each of those three occasions?

A. Yes, sir.

Mr. BRADLEY. I now propose, your honor, to ask Mr. Chester whether Mr. Booth said anything to him on those several occasions about a plot in regard to the President.

The DISTRICT ATTORNEY. I object, sir, of course.

Mr. PIERREPONT. Does the counsel think it is a proper question?

Mr. BRADLEY. I propose to ask it upon this ground. They have proved very clearly the death of Mr. Booth, who they have undertaken to show was engaged in a certain conspiracy. I now propose to show what the witness testified to on the trial before the military commission as to what Booth said in regard to that conspiracy against the President, what the nature of the conspiracy was, and when it was abandoned.

Mr. WILSON. Upon cross-examination?

Mr. PIERREPONT. If the counsel proposes to show that the witness testified before the military commission, or anywhere else, to anything different from what he has now testified to, we do not object. We only called this witness at present in regard to a specific point, and that was to prove Booth in New York city on a particular day. We propose to connect that with other things.

Mr. BRADLEY. The question is, whether, after they have proved the death of Booth, and seek to connect this defendant with him in some conspiracy, it is proper for us to give evidence of what Booth said in regard to that conspiracy; what propositions he made to this witness in regard to that conspiracy; what he said as to the nature of it; and further, what he said as to its having been terminated; all of which has been drawn out on a previous examination of the witness before the military commission, and is in possession of the government, and therefore no surprise to them.

Mr. PIERREPONT. When we offer any such proof, it will be proper for you to show what you propose.

The COURT. The question is not a proper one on cross-examination, nothing having been said by the witness on the subject in his examination in chief.

Mr. BRADLEY. I am satisfied.

The COURT. It is not responsive at all to anything elicited in the direct examination.

Mr. BRADLEY. The court will notice that the gentlemen have confined their examination to a single fact, or rather they have brought out but one fact, to wit, Mr. Chester's having been in company with Booth on the 7th of April, and there stop.

Mr. PIERREPONT. And propose to for the present.

Mr. BRADLEY. We propose to ask the witness one or two other questions.

Q. You were examined on the trial before the military commission?

A. Yes, sir.

Q. Do you recollect what you testified to there?

A. I think I do.

Q. I will ask you to state whether you testified to anything about the alleged conspiracy, and what Booth said to you.

Mr. PIERREPONT. Don't make any answer to that question.

The COURT. Is it in contradiction of anything he said here to-day?

Mr. BRADLEY. No, sir; I wish to test his memory as to whether he recollects it or not.

The COURT. That won't do.

Mr. Merrick desired to have an exception reserved to this; as also to the previous ruling of the court in regard to this witness.

The court at this point took a recess until Wednesday morning at 10 o'clock

WEDNESDAY, *June* 26, 1867.

The court met at 10 a. m.

The DISTRICT ATTORNEY called attention to the following, which appeared in the public prints as having taken place before the court took its recess yesterday afternoon:

"The court asked if there were any other witnesses to put on the stand.

"Mr. Bradley. There are half a dozen out there (pointing to the witnesses' room) in the penitentiary, and have been all the morning.

"Mr. Merrick. Not in the penitentiary now, but they will be."

The DISTRICT ATTORNEY said he heard the remark of Mr. Bradley, but considered it a merely playful one, and not of sufficient importance to reply to. He did not hear the remark of Mr. Merrick. He admitted that the utmost license in reflecting upon the character of witnesses was proper in the summing up arguments, but such remarks should not be tolerated in the court, from counsel on either side, during the examination.

The COURT said he did not hear the remark of Mr. Merrick, if it was made.

Mr. MERRICK said he made the remark, and made it in the same playful manner in which Mr. Bradley made his; but since it had assumed a serious aspect he would take it in a serious aspect, and hoped in the course of human events to make the remark good.

The COURT said it was not proper for counsel to reflect upon the character of witnesses by any side bar remarks. Their character would be open for discussion at a proper time, and in a proper way.

JAMES JOHNSON GIFFORD, carpenter—residence, Baltimore—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Did you formerly reside in this city?

A. I did.

Q. Were you here in 1865?

A. Yes, sir.

Q. Were you engaged about Ford's theatre about that time?

A. I was in Mr. Ford's employ about that time.

Q. In what capacity were you there employed?

A. I was a builder and carpenter at that place at that time.

Q. Do you know what box the President occupied on the night of the 14th of April?

A. The left-hand side of the stage, second tier—right-hand side from the audience.

Q. State if your attention had been directed to that box during the day; and if so, what you saw that particularly attracted your attention.

A. Between eleven and twelve o'clock I was notified that the President would be there, and to take the partition out of the box. There were two boxes, but when the President came it was always made into one box. There was a small inch partition that went up between the two boxes, about seven feet high. That was ordered to be taken out when large parties came, and was ordered to be taken out when the President was to be there.

By Mr. BRADLEY:

Q. Did it go up to the ceiling of the gallery over it?

A. It was a second tier box, in the line of what was called the dress circle.

By the DISTRICT ATTORNEY:

Q. How was it furnished—do you recollect?

A. I do not know how it was furnished on that occasion; I did not go into it.

Q. Do you recollect chairs and sofa being brought there?

A. I recollect that chairs were always in it.

Q. How was it on that occasion?

A. On great occasions they decorated it off.

Q. How was it on that occasion?

A. It was decorated on that occasion.

Q. Had you ever seen the chair in the President's box on that occasion, before? If so, when was the last time you saw it?

A. The last time I saw the chair in which the President sat on that occasion, it was in James R. Ford's and Harry Ford's room.

Q. Were they the proprietors?

A. No, sir; brothers of the proprietor.

Q. I call your attention to the Monday morning after the assassination; state if you went to the theatre and made an examination of the box; and if so, state in whose company you went, and the result of your examination.

A. I did not leave the theatre from the time of the assassination. On Sunday Mr. Maddox and Mr. Spangler came there, and I asked them to stay there. During my absence Judge Olin and Miss Harris called there.

Mr. BRADLEY. You need not state what took place then.

Q. State whether you examined the box yourself.

A. I did not on Sunday afternoon.

Q. Did you make an examination at any time to ascertain how the door was fastened?

A. Yes, sir; while the Secretary of War was there I explained it to him. There was a hole cut in the plastering of the wall; from that they had a bar that slipped against the door, and the door being at an angle, was secure from any rushing in or attempt to force it in; but if they shook the door the bar would at once fall out. There was a hole in the door close to the President's box, that I thought at first was where a pistol was fired, but on close examination I found it was cut with a left-hand auger bit.

Q. Describe where that cut was.

A. It was right in the corner of the panel, by the moulding. I thought, at first, it was shot through by a pistol.

Q. How did you examine it?

A. By looking at it; the only way I know.

Q. Go on with your statement.

A. That is all I have to say.

Q. Do you think it would have been observed easily by persons whose attention had not been called to it?

A. No, sir; you might have passed it a dozen times, you might have passed it a year and not have taken notice of it.

Q. How large was the hole?

A. It was about a quarter of an inch in diameter.

Q. When did it appear that this hole had been made? Did it seem to be fresh cut?

A. It appeared to be tolerably fresh.

Q. You had never observed it before?

A. Never.

Q. Could you tell what it had been made by?

A. Yes, sir; I could tell by the way it was cut; it was cut by a bit that turned left-handed.

Q. What sort of an instrument?

A. It was cut by a gimlet. I understood the government had the gimlet that

cut it. The hole had been tampered with by cutting it, so as to make it appear larger on the outside of the box.

Q. How long would it require to make it?

A. A man could put it there in half a minute. All he had to do was to turn the bit a few times round. The stuff was not more than three-eighths thick. Two or three turns would take the gimlet through it. It was at the rising of the panel, right in the corner where the moulding of the panel mitres.

Mr. PIERREPONT. Step to that door and explain to the jury where, corresponding in the door, it was.

(Witness explained.)

Q. How high was it from the floor?

A. I judge about 4 feet five or six inches, so that a man could look through.

By Mr. WILSON:

Q. Was it so that any person looking through it could easily see the whole interior of the box?

A. No, sir; he could see the left-hand side of the box; he could not see over the box. It was in a direct line from where the President sat.

Mr. BRADLEY. You mean by that that the President would be in full view from that hole?

A. He could see the back part of the President's head from where that hole was bored.

By Mr. WILSON:

Q. I wish you would describe a little more particularly that bar. State whether it was on the inside?

A. It was on the inside. It was a piece of about an inch or $\frac{7}{8}$ stuff. I saw it down there at the arsenal. One end had been cut or bevelled, with two or three sprigs in it. The other end to butt against the wall.

Q. Was there a place in the wall which it fit?

A. Yes, sir.

Q. How was it made?

A. Cut with a knife and scraped out.

Q. How long had it been made apparently? and how long would it take to make such a place?

A. A person very anxious about it would make it in three, four, or five minutes, and perhaps could fit the bar and all in ten minutes' time.

Q. Was the dust from the hole on the floor?

A. That I could not say. The box had been swept out; it was cleaned out every day, and of course I did not notice. There was no dust at the time I made the examination.

Q. How was the bar fitted at the other end?

A. One end was square. The other end was cut and bevelled, and there were two or three sprigs in it, about two inch sprigs.

Q. Do you mean nails?

A. Yes, sir.

Q. What were these sprigs for; to rest against the door?

A. I suppose the man intended them to rest against the door to keep the bar from slipping down; there was nothing else to keep it; the least shake would have thrown it out, but a hard push would make it tighter.

Q. When did you see that bar last?

A. I saw it down at the arsenal at the trial before the military commission; the first and only time that I saw it, that I know of.

Q. Examine that (exhibiting a wooden bar) and see if that is the bar?

A. To the best of my knowledge that is the bar.

Mr. WILSON. Step to the door and explain to the jury how the bar fitted.

(Witness explained.)

Q. Are the nails still in the bar?

A. Yes, sir; there are a couple of sprigs.

Q. What is the small piece of wood tied to the bar?

A. I do not know what it is; the information I had was that it had been cut off.

Cross-examination by Mr. BRADLEY:

Q. Do you know Edward Spangler?

A. Yes, sir.

Q. Was he employed about the theatre?

(Question objected to by assistant district attorney as not in response to anything brought out in direct examination.

Mr. BRADLEY. It is connected with the matter in issue and Spangler's name was mentioned on the direct examination.

The COURT ruled that the question might be answered.)

A. Yes, sir; he was there.

Q. What was his duty about the theatre?

A. He was a scene shifter. His place was on one side of the stage.

Q. State whether he was out in front of the theatre during the third act that night.

A. No, sir; I did not see him in front of the theatre.

Q. Could he have been absent from the stage for any time without deranging the play?

A. No, sir, he could not, without deranging the stage machinery.

GEORGE W. BUNKER sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where are you residing at this time?

A. I am at this time residing at the Clarendon Hotel, opposite the National, in this city.

Q. Were you employed at the National Hotel in 1865; and if so, in what capacity?

A. I was employed in the capacity of clerk, generally known as room clerk.

Q. Did you know John Wilkes Booth?

A. Yes, sir.

Q. Can you state from memory, or by referring to the register, when you saw him at the National Hotel last?

A. I last saw him about seven o'clock of the evening of the assassination, when he passed out of the hotel for the last time. He spoke to me as he went off.

Mr. BRADLEY desired it to be noted that this testimony was objected to.

Q. Examine the register now shown you, and state what it is.

A. This is the hotel register of the National Hotel of this city, for 1864 and 1865.

Mr. BRADLEY stated that if the witness had a memorandum made by him of the different entries of Booth's name, he was willing, to save time, that he should take that and swear to it.

WITNESS. There would be one great difficulty in referring to this book. I observe that the name of Booth has been cut from the book in nearly every instance where it occurred—I presume for the autograph.

By the ASSISTANT DISTRICT ATTORNEY:

Q. Look at this memorandum and state whether it is one made by you at the time of the trial by the military commission?

A. It is a memorandum we made on that trial.

By Mr. BRADLEY:

Q. Is it in your handwriting?

A. No, sir. I think it is in the handwriting of Colonel Wells, of the War Department. This is my handwriting across the top. This is correct.

By Mr. PIERREPONT:

Q. I wish you to refer to the memorandum merely to refresh your memory, and state when Booth was at your hotel during the latter part of 1864, up to the time of his death.

A. November 9, 1864, J. Wilkes Booth arrived at the National Hotel, and occupied room 20. He left by the early train on the morning of November 11.

Q. You know, in some way, that fact?

A. Yes, sir; by a book we kept at the hotel, called the departure book. He returned again November 15, and left on the 16th.

Q. At what time in the day?

A. He arrived in the evening, perhaps at 6 or 7 o'clock, and left on the 16th. It is impossible to tell from this book what hour in the day he left. I do not know that there is any way of ascertaining. His next arrival was December 12, and he next left December 17, on the morning train. His next arrival was December 22, in the early part of the evening, and he left again on the 24th. His next arrival was December 31, and he left again January 10, 1865. He next arrived on the 12th of January, and left January 28. He next arrived February 22. There is a memorandum, which is correct, that Mr. Merrick, clerk at the hotel, informs me that during his stay on this occasion Booth made several trips into Maryland.

Mr. BRADLEY. No matter about that; you need not read from that paper. It is not in your handwriting.

WITNESS. All right. He did, however, leave several times, and return again.

By Mr. MERRICK:

Q. What room did he occupy when he was at the hotel on the 22d of February?

A. I find in this instance that his name has not been cut from the register, and that he came in the early part of the evening, with P. H. Wentworth and John McCullough, and occupied room No. 231.

Q. Did they arrive together and register at the same time?

A. Yes, sir, and occupied this large room together.

Q. When did he next leave?

A. February 28, and returned March 1.

Q. Can you state whether his account commenced from March 1?

A. I do not find his name from March 1 to March 4.

Q. Did he not have an account from March 1?

A. I cannot tell from this book.

Q. From what book did you get it on the other trial?

A. From the departure book and the cash book.

Q. State when you next find his name.

A. I find that his name has been cut from the register of March 25.

Q. Do you find that he was called at 8 o'clock on the 1st, 2d, or 3d of March; and if not, what book would show that?

A. The call book would show that.

Q. On the 21st of March what do you find?

A. Nothing.

Q. If he paid $50 on that day, and left at 7.30, where would it appear?

A. It would be on the cash book and transferred to the ledger.

Q. On the 25th of March what do you find?

A. That his name has been cut from the register.

Q. What room had he?

A. No. 231, the same one he had been occupying.

Q. When did he leave?

A. April 1, the memorandum says.

Q. Now turn to April 8 and see what you find for the afternoon train.

A. April 8 I find his name has been cut again from the register; that he occupied room 228.

Q. From April 8 what happened until the assassination?

A. From April 8 to April 14, I do not think he was absent from the house; I have no recollection that he was.

HENRY WARREN SMITH, captain, assistant adjutant general, and brevet lieutenant colonel, sworn and examined.

By Mr. PIERREPONT:

Q. Where are you stationed?

A. At Vicksburg, Mississippi.

Q. To what army corps or command do you belong?

A. I am on duty in the Freedmen's Bureau, assistant adjutant general.

Q. Were you in the city of Washington at the time of the assassination?

A. I was.

Q. How long after the assassination did you remain here?

A. Eighteen months nearly.

Q. Will you state whether you were one of the officers who went to Mrs. Surratt's after the assassination?

A. I had command of the party.

Q. Tell us what day of the week and on what day of the month you made the arrest.

A. It was on Monday, the 17th day of April.

Q. Then it was the next Monday after the assassination?

A. Three days after the assassination.

Q. Did you arrest Payne at the same time and in the same house?

A. At the same time and in the same house.

Q. Describe to the jury your approach to the house, what occurred, who you saw, and give a description of the arrest of Payne and Mrs. Surratt.

A. I received orders from General Augur to go to Mrs. Surratt's house and arrest her and any suspicious personages I might find there. I had a party of three men detailed to go with me.

Q. Who went with you?

A. A man by the name of Wermerskirch, a man by the name of Rosch, and Eli Devoe. We went down H street till we got between Fifth and Sixth, or Sixth and Seventh, I forget which, to 541 H street. On approaching the house I posted the men; I sent one man into the back yard, directing him not to allow any one to pass out; placed one at the basement door, and took one up the steps.

Q. How did you get your man into the back yard?

A. There was a gate entrance on the side of the house, on the right-hand side going down.

Q. Describe the front entrance to the house.

A. It was by high door steps from the street.

Q. Was the outside entrance into the basement or the second story?

A. There was an entrance both to the basement and the second story.

Q. Into which did the steps lead?

A. The steps led into the second story.

Q. Which did you enter?

A. I entered by the steps, the second story, leaving a man outside to prevent any escape that way.

Q. Describe what you saw after you got up the steps.

A. Before ringing the bell, I leaned over and looked through the blinds into the parlor and discovered four females sitting close together, evidently in close conversation. From what occurred, I should judge they were anxiously expecting some one. They were turning and listening, from time to time, as if waiting for somebody to come. I then rang the bell; somebody came to the window and whispered, "Is that you Kirby?"

Q. Tell how?

A. They whispered in a low voice, "Is that you, Kirby?" I said, "No, it is not Kirby, but it is all right; let me in." She said, "All right," and opened the door. I stepped in and said, "Is this Mrs Surratt's house?" She said, "Yes." I said, "Are you Mrs. Surratt?" She said, "I am the widow of John H. Surratt." I said, "And the mother of John H. Surratt, jr.?" She said, "Yes." I then said, "Madam, I have come to arrest you and all in your house, and take you down to General Augur's headquarters for examination. Be kind enough to step in." She stepped into the parlor. There were three parties there; one was lying on the sofa. Said I, "Who are these ladies?" She said, "That is Anna Surratt, that is Olivia Jenkins, and that Honora Fitzpatrick." I said, "Ladies, you will have to get ready as soon as possible and go with me down to General Augur's for examination. Whereupon Miss Surratt commenced wringing her hands, and said, "Oh, mother, to think of being taken down there for such a crime." Mrs. Surratt stepped to her, put her arms around her neck and whispered something in her ear and she became quiet. I said to her that I had sent for a carriage, and to please get ready as soon as possible, that I would send somebody with them down to headquarters.

By the COURT:

Q. What time was that?

A. As nearly as I can state, a quarter after 10. Mrs. Surratt said, "I will go up stairs and get the ladies' things." I said, "I advise you to get warm wrappings, as it is a damp, drizzly night." She said, "I will go right up stairs." I said, "Excuse me, madam this house is suspected; I will accompany you up stairs." I told Devoe to remain in the room and see that no papers were destroyed, and that no communication passed between the ladies. I went up stairs with Mrs. Surratt. She obtained clothing for the ladies to go to headquarters. In the mean time two other detectives had reported—one by the name of Morgan, and another by the name of Samson. I sent Samson down stairs to take charge of the servants, and waited for the carriage. Mrs. Surratt said to me, "By your leave, sir, I would like to kneel down and say my prayers, to ask the blessing of God upon me, as I do upon all my actions." I told her, certainly; I never interfered with any such purpose. She knelt down in the parlor and prayed. In the mean time I heard steps coming up the front steps. Wermerskirch and Morgan were in the upper part of the house with me. I told them to go behind the door, and that when they rung or knocked to open the door and let them step in, whoever it was, and I would meet them in the hall, I thinking at the time it was Kirby that I was going to trap. I stepped into the parlor, and the door-bell rung. The door opened. I stepped out into the hall, and found myself face to face with Payne. Payne was standing on the threshold of the door with a pickaxe over his shoulder. I stepped out and met him. He said, "I guess I have mistaken the house." I said, "You have not." He said, "Is this Mrs. Surratt's house?" I said, "Yes." He seemed to hesitate. I drew my revolver and cocked it, and said, "Step in." He stepped in immediately. I said, lay down that pickaxe. He laid it down, or put it in the corner. I took him to the back part of the hall, and set two men to stand guard over him. We then commenced questioning him and examining him. I asked him where he had been. He said he had been working on the railroad and canal; that he had been working in different parts of the city. I asked him how long he had

been here. He said a week or ten days. I asked him if he had any papers with him. He said he had a pass, which he took out and handed to one of the officers, who passed it to me. I looked at it, and found it to be an oath of amnesty, or an oath in which he bound himself not to go south of the Potomac, I think.

Mr. BRADLEY. Where is that paper?

WITNESS. I do not know.

Mr. BRADLEY. You need not say anything more about the paper.

WITNESS. I then told him he was so suspicious a personage that I felt bound to arrest him, and send him down to General Augur's headquarters. I sent for a carriage immediately. I left him in charge of two men, and went down stairs to search the premises. I saw the servants there, and from them I learned——

Mr. BRADLEY. You need not state what you learned from the servants.

Mr. PIERREPONT. What was said by the servants or anybody else in presence of Payne or Mrs. Surratt is evidence.

WITNESS. There was nothing said by the servants in presence of any one, except the detective and myself. I asked Payne what he had been doing. He said he was a laboring man. I asked him where he lived. He said he could not tell. I asked him whether it was east, west, north, or south. He said he could not tell me where he lived. I asked him what he came to Mrs. Surratt's for that hour of the night. It was then verging towards 11 o'clock. He said he came to get instructions about digging a ditch in the back yard. I asked him what he came at that hour for to get instructions about digging a ditch. He said he didn't know; he was passing along. I asked him when he met Mrs. Surratt. He said he met her this morning, and agreed to dig a ditch for her, and that he wanted instructions to go to work the next morning. I then stepped to the parlor door, and said, "Mrs. Surratt, will you be kind enough to step here a minute?" Said I, "Do you know this man? Did you hire him to dig a ditch for you?" She raised both her hands, and said, "Before God I do not know this man; I have never seen him; I did not hire him to dig a ditch." Shortly after that, a carriage reported, and Mrs. Surratt and the three ladies were sent to General Augur's headquarters. A little while after, Payne also was sent there in another carriage. Both carriages went in charge of detectives.

Q. Who did you find in the house?

A. We found Mrs. Surratt, Miss Surratt, Miss Fitzpatrick, Miss Jenkins, a little colored girl asleep on the floor in the back room. We found Susan Ann Jackson, or a colored woman who said her name was Susan, and a man down stairs who, she said, was her husband.

Q. Would you know this Susan if you were to see her?

A. I think I would.

Q. Was she a full-grown person?

A. Yes, sir.

Q. Did you talk with this man?

A. I did a few minutes.

Q. Did you ask Susan any questions?

A. Yes, sir, I asked her a number of questions.

Q. Did you ask her anything about John Surratt?

(Question objected to by Mr. Bradley.

Mr. Pierrepont said he had the right to ask whether the witness had held any conversation; he had not asked what that conversation was.

The court decided the question could be put in that shape.)

Q. Did you question her?

A. I did.

Q. Did you question all the others?

A. I questioned them all.

Q. Did you make a written report of your examination at that house at the time?

(Question objected to by Mr. Bradley as immaterial.

Objection sustained.)

Q. Have you a distinct memory of what occurred at the time?

A. I have.

Question objected to by Mr. Bradley as improper on examination in chief.

The Court said it was proper to ask a man whether his memory is distinct about what he says.

WITNESS. My memory is distinct even to the very words.

Cross-examination by Mr. BRADLEY:

Q. You were examined before the military commission that tried the conspirators?

A. I was.

Q. Did you give the same statement you have given here?

A. Very nearly the same.

Q. I ask you in what it differs.

A. It differs in regard to the testimony about Miss Surratt.

Q. Is that the only particular?

A. That is, as near as I can remember.

Q. Did you state to the commission anything about looking into the parlor windows, seeing the ladies sitting there, and this whispering about Kirby, or anything of that kind?

A. I believe I did; I do not remember, not having reviewed my testimony particularly. I know in the statement I made in my written report, I did.

Q. I am not asking you about that; I am asking you about your examination in the trial of the conspirators?

A. I must say I cannot remember exactly what did occur in the trial before the military commission.

Q. You do not remember having stated there that you looked into the window and saw four ladies engaged in conversation, looking up and listening, and of one of them coming to the window and whispering, "Is that you, Kirby?"

A. I could not swear that I did or did not give that testimony.

Q. Did you state anything before that commission about Mrs. Surratt asking for time to kneel down and pray?

A. No, sir, I did not.

Q. Nor in regard to the incident between Mrs. Surratt and her daughter, in which Miss Surratt made the exclamation you have stated?

A. No, sir.

Q. Will you describe to the jury in what manner Payne was dressed?

A. Payne was dressed in a gray coat, with a gray vest, black pantaloons. His boots were rather fine, and if I remember right had red tops to the legs. The pantaloons were tucked into the top of one of his boots, and the other leg was hanging round his feet. He had on his head a woollen sleeve, appearing like a night-cap. It turned out to be a woollen sleeve, which he had pulled down over his head, letting the end hang down like a tassel.

Q. What was the condition of light in that passage?

A. It was about half head, I should judge, of gas; I do not know.

Q. Do you recollect in your testimony before the military commission, in answer to the question whether you knew a certain coat, saying "I am certain that this is the coat. I remember it by its color and general look, as near as I could judge by the light that was in the hall at the time?"

A. The light was not on full head at the time; it was about half head on.

Q. How near was Mrs. Surratt to you when you asked her if she knew that man?

A. I should judge about four or five feet.

Q. Did she come out of a strongly lighted room, or not?

A. No, sir. In the whole house the gas had been slightly turned down. There was a rather dim light in the parlor also.

Q. What did Payne reply when she said she did not know him?

A. He replied nothing to her.

Q. Were his pants and dress fresh or soiled?

A. His dress was a great deal soiled. It was right muddy round the lower part of his person.

Q. Was his coat worn or in good condition?

A. His coat was at that time a little muddy; otherwise it was in good condition, and appeared to be rather new.

Q. Do you remember the buttons?

A. The buttons were gutta-percha, stone color; that was what I recognized the coat particularly by.

Q. Could you not by the buttons, and button-holes, tell whether it was nearly new or not?

A. Yes, sir; but I did not notice whether it was new or not, more than that it was a good-looking coat.

Q. Can you describe to the jury with more certainty what color the coat was?

A. The coat was gray; such as is called confederate gray.

Q. Describe to the jury in what way the sleeve you have mentioned was put on his head.

A. It was pulled like a night-cap closely on, the knit wrist hanging down the side to represent a tassel.

Q. How far was it pulled down on his head or face?

A. It was pulled down on his forehead.

Q. What was the color of it?

A. Gray.

Q. Was it soiled, or not?

A. It was considerably worn, and did not look very clean. You could not tell whether it was soiled or not on account of the color.

Q. Describe, if you please, the relative position of these parties, Mrs. Surratt and Payne, and the position of the gas-light in the passage.

A. The parlor door was, I should judge, about eight feet from the front door. Right opposite the parlor door was the gas fixture. Payne was just under the gas fixture, in the chair.

Q. Against the wall?

A. Close to the wall.

Q. The breadth of the passage between him and Mrs. Surratt?

A. Mrs. Surratt stepped out of the parlor door. Payne rose, and I asked her, "Do you recognize this man?" The hall is a narrow hall.

Q. He rose directly up from the chair under the gas-light?

A. He rose up from the chair, and was not exactly under the gas-light, but nearly so.

Q. So that the gas-light shone upon the back of his head?

A. No, sir; the gas-light was shining upon his face, and also the light of the parlor.

Q. The gas-light shone on his face in that position?

A. Yes, sir; it came down at an angle.

Q. Was it nearer the parlor door than the steps, as you go up stairs?

A. It was near the centre of the hall, nearly opposite the parlor door.

By Mr. MERRICK:

Q. You say that Mrs. Surratt, Miss Jenkins, Miss Fitzpatrick, and Miss Surratt were in the parlor when you went in. Where was Miss. Surratt?

A. She was on the sofa.

Q. Where was Miss Jenkins?

A. In a chair near the head of the sofa. I would not venture to say whether she was closer to her than Miss Fitzpatrick. I paid very little attention, more than to see that they were there.

Q. Where was Miss Fitzpatrick?

A. She was right near by the head of the sofa.

Q. They were grouped about the sofa?

A. They were grouped about the head of the sofa, where Miss Surratt was lying.

Q. Did Mrs. Surratt enter the parlor with you?

A She did.

Q. Did you follow up close alongside her, or stop at the entrance of the parlor?

A. I went right in with her.

Q. Where did she go when she went into the parlor?

A. She stood up near the centre of the room.

Q. Did she advance towards the sofa—towards Miss Surratt?

A. When I said I had come to arrest them, Mrs. Surratt then advanced towards her.

Q. When you told them you had come to arrest them, you were standing near the centre of the room?

A. I was.

Q. Miss Surratt began to cry, and Mrs. Surratt advanced towards her?

A. Yes, sir; and embraced her, and induced her to be quiet.

Q. Miss Fitzpatrick and Miss Jenkins were near by them?

A. Yes, sir: they were all near the corner of the room.

Q. And you say you did not testify to that fact before the military commission?

A. No, sir.

Q. Were you not asked before that commission to state all that occurred in the house on the night you arrested this party?

A. I was.

By Mr. PIERREPONT:

Q. Why did you not state all?

A. Because a natural embarrassment, I suppose, drove it from my mind. I remembered it afterwards, and stated it. I did not think of it at the time. I recollected it when I made my written statement afterwards.

Mr. MERRICK. No matter what you did afterwards. Have you been asked anything about what would be your testimony in this case?

A. No, sir.

Q. You have not been examined by anybody with a view to this case?

A. No, sir.

ULYSSES S. GRANT, General United States army, sworn and examined:

By Mr. PIERREPONT:

Q. At what time were you in command at Vicksburg?

A. In the early part of 1863—the first half of the year 1863; there and opposite Vicksburg, on the Mississippi, near Vicksburg.

Q. Will you tell the jury at what time, if any, you met Jacob Thompson, and under what circumstances?

(Mr. BRADLEY desired to have objection to this testimony noted.)

A. I met Jacob Thompson some time during the first or second month I was at Milliken's Bend, in the beginning of 1863. I cannot state the exact time.

Q. State the circumstances and what claim he there made.

A. One of our picket-boats discovered a little sail or row boat with a few

persons in it, up the river, near the shore on the Mississippi side, about abreast of where we were lying at the time, or where the flag-ship of Admiral Porter was lying. I sent out to bring them in. When we were near to them we discovered that they had a little white flag, like a flag of truce. We brought them in, and I met Thompson at that time at the flag-ship of Admiral Porter.

Mr. BRADLEY objected to any conversation between General Grant and Thompson, or anybody else not connected with the conspiracy.

Mr. PIERREPONT stated that the prosecution had connected Jacob Thompson with money. They had a man who went there the same day, and expected to have a man who took the money. They wanted to show who Jake Thompson was and what relation he held.

Mr. MERRICK asked whether the prosecution expected to connect Jacob Thompson with the conspiracy to kill the President.

Mr. PIERREPONT said he expected to show that he was in it and aided in it by the use of money.

The COURT understood counsel for the prosecution to say he expected, in the examination of witnesses hereafter, to show the connection of the prisoner at the bar with Jacob Thompson in regard to the disbursement of money in the prosecution of this conspiracy. If he could make that connection, the evidence would be relevant. If not, it would be irrelevant. For the present, the testimony was admitted.

Mr. BRADLEY desired an exception to the ruling to be noted.

WITNESS, continuing: I met Thompson on Admiral Porter's flag-ship and had some conversation with him He represented himself as a staff officer, stating some ostensible business. I think he represented himself as acting inspector general of the rebel army. I do not think he stated that he held a commission at all in the confederate army, but represented himself as an acting staff officer. It was in the early part of 1863, when I was at Milliken's Bend.

Mr. BRADLEY. That is to say March, 1863?

A. I think in February, 1863.

CHARLES DAWSON sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. State where you were employed in the early part of 1865.

A. I was at the National Hotel in 1865.

Q. Are you still there?

A. Yes, sir; I have been there ever since.

Q. Were you, in April, 1865, acquainted with John Wilkes Booth?

A. I was.

Q. Be good enough to say if you have before you the register, departure book, and cash-book belonging to the year 1865, and for the month of April of that year?

A. I have.

Q. Refer to them and state the times of Booth's arrival and departure during the months of January, February, March, and April, 1865.

A. I cannot tell from these books without going over the whole books.

Q. Will you state what articles Booth left at your house and which were there on the day of the assassination of the President?

A. He left a large trunk and a valise.

Q. Where did they remain?

A. They were placed in the baggage-room of the hotel and remained there.

Q. When were they first examined, to your knowledge?

A. They were first examined on the night of the assassination and taken down to the baggage-room and locked up. They were not, to my knowledge, touched at all for a long time. A few days before the arrest of Surratt I was

in the baggage room examining some baggage. The valise was partially open. I opened it to examine the condition of the clothing. His trunk has never been opened.

Q. Did you examine the condition of the clothing in the valise?

A. Yes; I took two or three pieces out, found they were in rather a bad condition, and put them back again.

Q. State what, if anything, you found, that particularly occurs to you, in that examination.

A. I lifted up a black velvet vest and several cards fell out of the pocket.

Q. What did you do with the cards?

A. I returned to the pocket all except one or two; on one of them was written "J. Harrison Surratt."

Q. Have you that card here?

A. I have.

(Card produced.)

Q. Has it been in your custody ever since?

A. It has.

Mr. BRADLEY said as the card had not been placed in evidence nor proved to be in the handwriting of the prisoner, he desired to have that part of the answer which stated anything written on the card stricken out.

The COURT so directed.

By the DISTRICT ATTORNEY:

Q. Did you know John Wilkes Booth?

A. I did.

Q. Did you know him well?

A. I saw him a great number of times in the course of two years.

Q Did you ever see him write?

A. I have seen him write his signature on the register.

Q. Did you ever see any written communications of his?

A. I don't think I ever did.

Q. Do you know his handwriting?

A. I know his signature.

Q. Examine this letter (letter handed witness) and state if you recognize it, or if you remember ever seeing it before?

A. Yes, sir; I have seen that letter before.

Q. Where did you see it?

A. It was in the rack at the hotel, where letters are kept under initials. Some time during the trial at the arsenal I was looking over the letters under the head of "B," and the initials on this struck me as rather strange. I took the letter down to Mr. Bingham while the trial was going on. It came through the mail, and was among the letters in the hotel in the alphabetical rack.

Q. The initials are J. W. B.; was there any other person than Booth with those initials at that time stopping at the hotel?

Mr. BRADLEY. Was Booth stopping there?

A. He was not; he was dead.

Q. How long after the assassination did you first see this letter?

A. It was some time after the assassination, and some time after the letter was postmarked.

Q. When was the last time you saw Booth at the National Hotel?

A. On the day of the assassination, the 14th of April.

Q. On that day, or for some week previous, had there been any person stopping at the hotel with these initials, to your knowledge?

A. I can say that, at the time I discovered the letter, I looked over the rack and found that there was no one with these initials there.

Q. What was the postmark of that letter?

A. I cannot decipher the name of the office. It looks as much like Cumberland, Maryland, as anything. The date of the postmark is May 8.

Q. Was the letter shown you inside that envelope?

A. It was.

Mr. PIERREPONT. We propose now to offer this letter in evidence.

Mr. BRADLEY said he could not conceive on what ground it could be offered.

Mr. PIERREPONT said the letter was of such a character that, if produced on a trial for murder, it would be admitted in evidence, not as conclusive as to what it states, but as one of the facts to go to the jury, the jury to decide what inference could legitimately be drawn from it.

The COURT (to witness.) Do you know at what time it came into the hotel?

A. I cannot tell what time it came there. It was on the 24th of May, according to the report of that trial, that I found it.

The COURT overruled the objection, and admitted the letter in evidence.

Mr. BRADLEY desired to have an exception noted.

The letter was read as follows:

SOUTH BRANCH BRIDGE, *April* 6, 1865.

FRIEND WILKES: I received yours of March 12th, and reply as soon as practicable. I saw French and Brady and others about the oil speculation. The subscription to the *stock* amounts to eight thousand dollars, and I add one thousand myself, which is about all I can stand; now when you *sink* your well go deep enough, don't fail, everything depends upon you and your *helpers;* if you can't get through on your *trip*, after you *strike* ile, strike through Thornton Gap and across by Capon, Romney's, and down the branch, and I can keep you safe from all hardships for a year. I am clear of all surveillance now that infernal Purdy is beat. I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in the *shade*, but he suspects too damn much now; had he better be *silenced for good?* I send this up by Tom, and if he don't get drunk, you will get it the ninth. At all events, it can't be understood if lost. I can't half write, I have been drunk for two days. Don't write so much highfalutin next time. No more; only Jake will be at Green's with the funds. Burn this. Truly yours, LOT.

Sue Guthrie sends much love.

By the ASSISTANT DISTRICT ATTORNEY:

Q. Are you acquainted with the signature of Booth?

A. I am.

Q. Examine the signature on this card, (card shown to witness,) and say whether it is his signature

A. I believe that is Booth's signature.

Cross-examined by Mr. MERRICK:

Q. I understand you to say that that letter was mailed May 8?

A. That is the post-mark.

Q. Who distributed the mail at that time at the hotel?

A. I could not tell. There were three clerks; I could not say which one received that particular mail. Different mails were received at different hours of the day.

(The witness was here directed to make memoranda, from the hotel books, of the arrivals and departures of Booth from January 1, 1865, down to the date of the assassination, and bring it to the court when he should have done so.)

The court here took a recess for half an hour.

AFTERNOON SESSION.

RICHARD C. MORGAN—residence, New York city—sworn and examined.

By Mr. PIERREPONT:

Q. In April, 1865, where were you stationed, and what were you doing?

A. I was in the service of the War Department, as chief clerk to Colonel Olcott, special commissioner of that department.

Q. You remember, of course, the assassination?

A. Yes, sir.

Q. On the evening of Monday, the 17th of April, following the assassination, what did you do?

A. On the night of the 17th of April, 1865, I was directed to proceed to the Surratt house on H street, which I did.

Q. You were not under Colonel Smith, I suppose?

A. No, sir.

Q. You went under a separate order?

A. Yes, sir. He was sent down there first, and I was sent down afterwards to take charge of the party that was sent down.

Q. When you got to the house what did you do?

A. When I got to the house I knocked at the door. I found that Major Smith and Captain Wermerskirch had just entered. Captain Wermerskirch introduced me to Major Smith, telling him at the same time who I was. I then took charge of the party.

Q. Did you see Mrs. Surratt there; and if so, who else?

A. I saw in the parlor Mrs. Surratt, her daughter, Miss Surratt, and two other ladies whose names, if my memory serves me, were Miss Fitzpatrick and Miss Jenkins. I cannot be sure about the names, however. There was a colored woman in the basement.

Q. You saw the colored servant, did you?

A. Yes, sir.

Q. Give a description of her as nearly as you can.

A. She was rather a tall woman. That is all I can say about her.

Q. And about how old?

A. I should think about thirty.

Q. A full-grown woman?

A. Yes, sir; and very black.

Q. Did you speak to her?

A. Yes, sir. I asked her ——

Mr. MERRICK. No matter about that.

The COURT. You must not speak of anything that was said by others, unless it was said in the presence of the prisoner, Mrs. Surratt, or Payne.

Q. Have you a distinct memory of what occurred that night?

A. Yes, sir; as distinct as a person can have of matters that occurred two years ago. I have a very good memory.

Q. Did you make any written statement of what took place there at the time?

Mr. BRADLEY. I object. Is it material to this issue to know whether he made any written statement or not?

The COURT. I have ruled that it is not.

Mr. PIERREPONT. I did not so understand your honor's ruling. If such is the case, of course I withdraw the question.

Q. Will you please state what occurred in the presence of Payne?

A. I directed that Mrs. Surratt and all the others in the house should be sent up to the provost marshal's office. They hesitated about going. I told them they should not delay, but go right away. I told Mrs. Surratt to go up stairs

and get the bonnets and shawls of the rest of the party. She did so, I sending an officer along with her. She got all the things and brought them down in the parlor, where they prepared themselves to leave. When they were about ready to go, she said something about it being a cold, damp night I said I would send for a carriage, and immediately directed one of my men to go and get one. About three minutes before he returned there was a knock and a ring at the door. I was at the time standing by the parlor door. I instantly stepped forward and opened the door, thinking it was the man returning with the carriage. Instead, however, of it being him, a man entered dressed as a laboring man, with a pickaxe over his shoulder. As soon as he saw me he stepped back and said, "Oh, I am mistaken." Said I, "Who do you wish to see?" He said, "Mrs. Surratt." I replied, "It is all right; come in." I passed him in and put him behind the door, standing myself with my hand on the door, open. I said to Mrs. Surratt, "Are you ready?" and then remarked either to Major Smith, or one of the clerks standing there, I cannot now say which, "Pass them out." As they were about starting I looked around and saw Mrs. Surratt just getting up from her knees and crossing herself. I said, "Hurry up and get along; the carriage is waiting." I sent a man off with them to the provost marshal's office. After I passed them out I commenced to question Payne.

Q. Passed who out?

A. Mrs. Surratt and the other three ladies.

Q. Before you passed Mrs. Surratt out what was said to her about Payne, if anything?

A. After she got up from her knees, Major Smith made some inquiry as to whether she recognized him. I did not hear exactly what he did say, nor the reply she made.

Q. What did she say to you?

A. She leaned her head over toward me and said, "I am so glad you officers came here to-night, for this man came here with a pickaxe to kill us." I made no reply, but passed them out the door, and then closed it and commenced to question Payne. I asked him how he came there, and what for? He said he came to dig a gutter for Mrs. Surratt. I asked him how he knew Mrs. Surratt.

Q. Was this after she had made the statement that he had come to kill them?

A. Yes, sir. She made that remark to me as she passed out. I then asked Payne if he knew Mrs. Surratt, and how she happened to engage him. He told me that he met her on the street and she then engaged him. He stated that he was a poor man, a refugee from the south. I told him it was a pretty time to come to dig a gutter, and asked him where he was on Friday night. He mentioned some sort of street, the name of which I have forgotten. I asked him if he boarded there; and if not, where he lived. He said he boarded wherever he got work. I asked him if he expected to sleep there that night. He said he expected Mrs. Surratt would let him stay there that night, as he was going to work early in the morning. I asked him where he was from. He said that he was from Fauquier, Virginia. Previous to this he had pulled out an oath of allegiance, on which was written, Lewis Payne, Fauquier county, Virginia. I then took the pickaxe out of his hand, hurled it round, and asked him about himself. I asked him how old he was, whether he had any money, and whether he was a poor man. He said he made his living by the pickaxe. I asked him how much he earned and where was the last place that he worked. He gave me a very unsatisfactory account. I said to him that I would have to arrest him, and would send him up to the provost marshal's office as soon as the carriage returned, as my prisoner. On saying that he moved as if about to make some resistance. I called the captain's clerk and he stood by him. In a few minutes the carriage returned with the man who had taken up Mrs. Sur-

ratt and party; I then directed two officers to take a pistol and go with Payne in the carriage to the provost marshal's office. I then had the pickaxe put in and the carriage was driven off. I remained there searching for papers until about three or four o'clock in the morning, when I repaired to the provost marshal's office, where I saw Payne in irons, and was told that he had been recognized.

Q. Who did you see in the house besides the parties you have mentioned?

A. There was a colored man there who said——

Mr. MERRICK. Never mind what he said.

Q. Did you find anybody else in the house except those you have mentioned?

A. No one else but this colored man.

Q. You have said that you were there until three or four o'clock in the morning examining the house?

A. Yes, sir.

Q. What did you get, and what did you do with what you got?

A. We found different letters, cartes-de-visite, a bullet-mould.

Q. Where did you find the bullet-mould?

A. In the room back of the parlor, which I was informed was Mrs. Surratt's.

Mr. BRADLEY. Never mind what you were informed.

The COURT. You must not give second-hand information.

Q. You say you found the bullet-mould in some room?

A. I found it in the room back of the parlor, on the first floor.

Mr. BRADLEY. Did I understand you to say that you found the bullet-mould, or somebody else?

A. Well, Captain Wermerskirch was with me, and we might both have seen it at the same time. We took possession of an empty trunk which we found there, and anything we discovered that we deemed of any consequence we would throw into this trunk.

Q. What else did you find in this room? What was found by yourself or when you were present and looked on?

A. Well, I will just say that I might have picked up a letter or something and showed it to Captain Wermerskirch, and he might, on the other hand, have done the same by me; we were both searching together.

Q. Well, let us know what was found in that way.

A. There were some letters, a portfolio, and some bullets.

Q. Where were the bullets found?

A. I think near the bullet-mould. We also found some caps.

Q. Did you learn from Mrs. Surratt whose room that was in which you found the bullet-mould, the bullets, and the caps?

A. I cannot say I did, only some one there said——

Mr. MERRICK. Never mind.

The DISTRICT ATTORNEY. You can state what was said, if in her presence.

Mr. PIERREPONT. What, if anything, was said in her presence as to whose room it was in which these things were found?

Mr. BRADLEY. In her presence and hearing.

Mr. PIERREPONT. Yes, sir.

WITNESS. I could not say about that positively, but it is my impression that she said as she was passing out, "This is my room," or something of that kind.

Q. Your impression is that she said that?

A. Yes, sir; that is my impression, but I am not certain about it.

Q. What is your best recollection as to whether she said that or not?

A. Well, as I say, I think she did, but I am not positive.

Q. That is your best recollection?

A. Yes, sir.

Q. It was the room off the parlor?

A. Yes, sir.

Q. What else did you find?

A. A card, with "*sic semper tyrannis*" on it.

Mr. BRADLEY. Don't state that.

The COURT. You must not state what the card had on it.

Mr. PIERREPONT. You found a card with some writing on it. What did you do with that?

A. Threw it in with the other things.

Q. What else was found?

A. A pair of boots. Those were found in the room over this one, in the middle of the floor. They were all dirty, as if they had just been taken off. We also found a portfolio and a whistle.

Q. Have you seen the whistle lately?

A. Yes, sir.

Q. What else?

A. I will have to think awhile. It was a good while ago, and so many things have occurred since then that I cannot upon the instant recall everything.

Q. Did you find a spur?

A. Yes, sir; a part of a spur. Another one was found, too, which was also broken.

Q. And what else?

A. A bank book; I took the bank book, I remember.

Q. Did you find an under-shirt?

A. I do not recollect all those things. I might have.

Mr. PIERREPONT. I only want what you remember.

Mr. BRADLEY. Are you now talking about the room back of the parlor, or the one up stairs?

WITNESS. We went through the lower rooms first. Then we went through the upper ones.

Q. And you found a pair of boots all dirty in the upper room?

A. Yes, sir.

Q. Did you find any letters?

A. Yes, sir; any quantity of them.

Q. What did you do with that quantity of letters?

A. Put them in the trunk and delivered them at the provost marshal's office, with the other papers.

Q. Have you seen them since?

A. I saw them the next day, or a few days after that.

Q. You have not seen them lately, I suppose?

A. No, sir.

Q. Do you identify this? (handing witness a small whistle.)

A. I think that is the same whistle that I picked up there. It is my impression that I picked that up on the floor in Mrs. Surratt's room, or on the mantel-piece.

Mr. PIERREPONT, after privately consulting with counsel for the prisoner, said: I hold in my hand, your honor, what purports to be a receipt given by Miss Anna Surratt for certain articles taken from her mother's house, which were delivered to her on the 28th of June, 1865, by the then provost marshal of this city.

Mr. BRADLEY. Dont't let us have that kind of evidence in the case.

Mr. PIERREPONT. I will merely ask if the counsel will produce these articles.

Mr. BRADLEY. You must serve us with regular notice for anything we have relating to this case.

Mr. PIERREPONT. I presume we will have to do so before we can get them.

Mr. BRADLEY. The court has no control over that.

Mr. PIERREPONT. I do not know how that may be. Of course we will have to conform to whatever has been the practice.

The COURT. Are the papers or articles mentioned there in the custody of Miss Anna Surratt?

Mr. PIERREPONT. It seems from this statement that certain papers and letters were delivered to her. We desire the papers, and will, of course, pursue whatever is the proper mode in order to get them. I am not familiar with the practice here.

Mr. BRADLEY. Surely the district attorney knows, if Judge Pierrepont does not.

Mr. MERRICK. The court has nothing whatever to do with it. It does not know anything about it as yet.

Mr. PIERREPONT. I myself do not know what course to take in order to secure them, whether by application direct or some other process. No doubt the district attorney knows, and I will confer with him.

Examination resumed.

By Mr. PIERREPONT:

Q. Have you stated anything about photographs?

A. I mentioned cartes-de-visite.

Q. Were they photographs?

Mr. BRADLEY. What is a carte-de-visite but a photograph?

WITNESS. There is a difference.

Mr. PIERREPONT. What is the difference?

WITNESS. The one is taken on glass and the other on a card.

Mr. MERRICK. What, a photograph taken on glass?

The DISTRICT ATTORNEY. Well, gentlemen, we will exhibit them to the witness.

The COURT. I think he is hardly an expert in the photograph business.

Mr. PIERREPONT. Whatever they are, we can produce them. Mr. Wright has them, I believe.

Q. You say there were a large quantity of letters?

A. Yes, sir.

Q. About how many would you say?

A. I should think one hundred, or so.

Mr. PIERREPONT. We shall have to take the necessary means to get them before we can lay any foundation for proving their contents; whatever is required under the practice of course we will comply with.

Mr. WILSON (after conferring with the witness Wright.) There is only one of these photographs here.

Mr. PIERREPONT. Where are the others?

Mr. WILSON. They have been returned, I suppose.

Q. Do you know anything about that? (handing witness a square pasteboard frame containing a carte-de-visite.)

A. It is my impression this was found on Mrs. Surratt's mantel-piece.

Q. Is it in the same condition now as it was when you found it?

Mr. BRADLEY. The witness says it is his impression he found it.

Q. When you say "your impression" what do you mean?

A. I mean a frame like that was found.

Q. What do you mean—that that is your best recollection?

A. Yes, sir.

Q. Have you any recollection of having seen that before?

A. I recollect of having seen it at Mrs. Surratt's house on the mantel-piece. That is, to the best of my recollection, I saw it.

Q. What was it in when you saw it there?

A. It was a different kind of a picture. There was a fancy picture, and on the back of it there was——

Mr. BRADLEY. Stop a moment. The witness says he saw a different kind of a thing at that time. Let us have that different kind of a thing.

Mr. PIERREPONT. I haven't the thing, as I know of; I am trying to find it. You know as much about it as I do.

Q. I want to know what was in this frame when you found it in Mrs. Surratt's room?

A. I cannot remember. There was a picture in it; something in the back of it; a carte-de-visite of Booth in the back of it.

Q. Is the carte-de-visite of Booth in the back of it now?

Mr. MERRICK. We object to that testimony.

The COURT. You object to his saying anything about it at all?

Mr. MERRICK. We object to his making known what was in it, in the way of a paper having on it a picture or writing. Let them produce the paper.

Mr. PIERREPONT. Suppose we don't choose to produce it.

Mr. MERRICK. Then you can't prove it.

Mr. PIERREPONT. Yes, we can, if we show there was a picture in it.

Q. Tell us what there was in it.

Mr. BRADLEY. We object until they lay the foundation.

Mr. PIERREPONT. I undertake to show what was the condition of that when found. That I have a right to do. I do not know what was in it. I am endeavoring to ascertain that.

Mr. MERRICK. Then I say you had better have somebody examine the witness who does know. I will cite this, your honor, in illustration of the propriety of our objection. As I understand it, this is a sort of a frame in which different pictures might fit. The counsel hands this frame to the witness and asks him whether there was or not some picture in it when he got it which is not in it now. He might just as well hand the witness an envelope which might contain any one letter, and ask him to look at the letter in it, and state if that is the same letter he saw in it before; and when the witness says it is not the letter which was in it when he first saw it, then ask him to go on and state what was in the envelope when he did see it. I cannot see any difference.

Mr. PIERREPONT. There is no difference; I would have a right to present the witness with an envelope and ask him whether it was in the same condition now, as when he first saw it; and if he said it was, why very well; but if he said it was not——

Mr. MERRICK. You would have a right to ask him as to whether the envelope was in the same condition, but you would not have a right to ask him as to the contents of the envelope.

Mr. PIERREPONT. I am not asking the contents.

The COURT. I do not see that there is any occasion for any difference between you. You are both desirous, I presume, of getting at the fact whether this frame is in the same condition now as it was when first seen by the witness.

Mr. MERRICK. He has already stated distinctly that it is not in the same condition. He was then going on to state that there was a carte-de-visite of J. Wilkes Booth in it, to which we objected. The gentleman insists that he has a right to ask him what was on the card.

Mr. PIERREPONT. I have not asked him what was on the card.

Mr. MERRICK. We object to anything being said about the carte-de-visite, unless they produce it.

Mr. PIERREPONT. We have not reached that point yet.

Q. I will ask you to look at this frame and state if you now find anything in the back of it?

A. No, sir.

Q. Anywhere; I do not care where?

A. This is the back; (back of the glass face.)

Q. I say in it?

A. Yes, sir. I find in it a card with "morning, noon, and night" on it.

Q. I will ask you whether there was anything else in it when you found it?

Mr. MERRICK. Don't state what it was.

A. This frame is not in the same condition as when I found it, but I cannot exactly say.

Mr. PIERREPONT. I am not asking now the condition of the frame; I am asking whether there was anything else either in the back or front when you found it.

A. Yes, sir; there was a card.

Q. Will you tell us what became of that something?

A. It was turned over to the government.

Q. Will you look at that (handing witness a photographic picture of Booth,) and state whether that is the something that was turned over to the government.

Mr. BRADLEY. You might have produced that at first and saved all trouble about it.

Mr PIERREPONT. We were trying to get at this.

Mr. MERRICK In rather a circuitous manner.

Mr PIERREPONT. The circuity grew out of your objection.

Q. You will please answer the question.

A. I can say that it was a picture like this. I cannot say that this is the identical one.

Q. Do you know who that is the picture of?

A. J. Wilkes Booth.

Q. Will you state where the picture like this, as you say, was in that frame?

A. It was in the back of it. There was another picture in front of it; that is, I mean of the frame which I have reference to. If this is the same one, why of this.

Q. And that picture could not be seen when you looked at it?

A. No, sir.

Cross-examination by Mr. BRADLEY:

Q. You state to the jury that that is the same frame or case which you saw at Mrs. Surratt's?

A. To the best of my recollection it is. It is much defaced now, and, therefore, I cannot be positive. It may be the same, and then again it may not.

Q. Is there any mark upon it by which you can identify it?

A. No, sir.

Q. Has it not been broken since you saw it?

A. Yes, sir.

Q. What was there in that case; any picture besides the one which you say was the picture of J. Wilkes Booth?

A. I cannot remember how many pictures were in it.

Q. Only one?

A. Yes, sir.

Q. Was there any picture besides that of J. Wilkes Booth?

A. Yes, sir.

Q. Then there were two?

A. One was put back and not shown as a picture.

Q. I did not ask how much was shown. How many pictures were in that frame?

A Two.

Q. One was a picture of J. Wilkes Booth?

A. Yes, sir.

Q. What did you do with that frame and picture?

A. It was turned over with the rest of the papers to the provost marshal. They were put up together. It was the next morning, I think, when that was found.

Q. Did you turn them over to the provost marshal yourself?

A. Yes, sir; I took them to his office. I did not turn them over to him.

Q. Were they or not put into that trunk?

A. They were taken from the house in a trunk, and remained in that trunk until they were assorted out and filed.

Q. And that trunk, with these things in it, you carried to the provost marshal's office yourself?

A. Yes, sir, with the assistance of Major Smith. We put it into a carriage and took it up there.

Q. Did you stay at that house all night?

A. No, sir; towards four o'clock in the morning I left.

Q. What time did you return?

A. I went down there the next morning, I think, between ten and eleven o'clock.

Q. Was that trunk locked?

A. That trunk was not at the Surratt house when I returned.

Q. Didn't you say you found the trunk in Mrs. Surratt's room?

A. I took the trunk to the provost marshal's office, and when I left, locked it up.

Q. Who had the key?

A. Some officer attached to the department there.

Q. You did not keep it yourself?

A. I might have taken it. I went in the morning and looked over some of those papers; staid there for an hour or two, and then went down to Mrs. Surratt's again to see if I could find anything else.

Q. Do I understand you to say that when you got to Mrs. Surratt's house you took charge of the party there?

A. Yes, sir.

Q. Then you had command of Major Smith?

A. I do not suppose he would consider I had.

Q. You ordered him to do so and so?

A. Yes, sir, I did; Captain Wermerskirch introduced me to him. I then said I would take charge, and he expressed himself as willing, and said he was very glad.

Q. Who was the superior officer there?

A. All the men who were there were under my orders, and had been for three or four years before.

Q. What commission did you hold?

A. I was chief clerk to Colonel Olcott, special commissioner of the War Department.

Q. What office was that special commissioner of the War Department?

A. An office of special commissioner for the investigation of frauds on the government.

Q. And you were chief clerk under him?

A. Yes, sir.

Q. Had you military rank then?

A. No, sir.

Q. Had Major Smith any military rank then?

A. I believe he was in the volunteer service.

Q. Had he anything to do with the detective service?

A. I do not know. He might have had.

Q. Had you?

A. No, sir.

Q. What was Captain Wermerskirch's position?

A. He was a captain in the volunteer service.

Q. And you took charge of these two officers?

A. Yes, sir. The other officer was Thomas Sampson; he was a detective.

Q. He went with you?

A. Yes, sir; he was a detective. C. H. Rosh was there, and he was a detective.

Q. You took charge of the whole party?

A. Yes, sir. The detectives were under Colonel Olcott, and acting under my orders at that time.

Q. Who gave permission to Mrs. Surratt to go up stairs and get her shawl?

A. Well, Major Smith and myself were standing at the door; we found it necessary to have the shawls, and I mentioned to Major Smith to accompany Mrs. Surratt. I told her to get ready, and I said——

Q. Did you direct Mrs Surratt to go up stairs and get the bonnets and shawls of the rest of the party in the house?

A. Yes, sir; I think I did.

Q. Did you direct Major Smith to accompany her?

A. I might have directed him to do it, or he might have volunteered to do it.

Q. When you reached there, I understand that the ladies were in the parlor and were about to leave?

A. No, sir; but they were all in the parlor.

Q. They were not about to leave when you reached there?

A. Not when I first reached there. They were about to leave as Payne entered.

Q. You were examined as a witness before the military commission?

A. Yes, sir.

Q. Do you recollect of stating on that occasion that you arrived at the house about half past eleven o'clock, and found Major Smith, Captain Wermerskirch, and some other officers, who had been there about ten minutes. The inmates were in the parlor, about ready to leave?

A. I might have made that statement. I have no doubt I did.

Q. Were you and Captain Wermerskirch ordered by Major Smith to place yourselves at the door, when somebody knocked at the door?

A. No, sir; Captain Wermerskirch was at the parlor door.

Q. You were not ordered there by Major Smith?

A. No, sir; not a bit. Major Smith was in the back-room at the time.

Q. Where was Major Smith at the time Payne came up to the door?

A. He was at the back door, and as the bell rung he came forward. Captain Wermerskirch and myself were standing at the parlor door, while Mrs. Surratt and the ladies were putting on their things. They were about ready to start when there was a knock and a ring at the same time. I thought it was the man who had been sent for the carriage. Captain Wermerskirch and myself stepped up to the door and I opened it.

Q. You did not do it under the orders of Major Smith?

A. No, sir. We opened it, and then Major Smith came forward. He got there just as I opened it. Payne entered when he said "I am mistaken." I remarked to him, "It is all right; who do you wish to see?" He said, "Mrs. Surratt." I said, "All right, come in." When he got in a little way, I looked in the parlor and said to Smith, who was there, "Are the ladies ready." I put my hand on the parlor door.

Q. Where was Major Smith at that time?

A. He was about there in the entry.

Q. Moving about?

A. Yes, sir.

Q. Who interrogated Payne?

A. I did.

Q. You are confident about that?

A. Yes, sir; Major Smith joined in some afterwards. I kept up the conversation with Payne, but Major Smith and Captain Wermerskirch, who were alongside, asked questions occasionally. I went on and talked with Payne,

and Major Smith and Captain Wermerskirch went into the back parlor, where we had been searching for papers. I carried on the conversation with Payne alone for twenty minutes.

Q. Were you close to Payne all the while you two were together there?

A. Yes, sir.

Q. Where was Mrs. Surratt while you were interrogating Payne?

A. I had not asked Payne more than seven or eight questions before I passed Mrs. Surratt out.

Q. Did you hear Major Smith ask Mrs. Surratt if she had hired that man to do the work there?

A. My impression is that when Mrs. Surratt was coming out of the parlor to leave, Major Smith asked her if she had ever seen that man (Payne) before. Payne was standing right behind me, and my arm was resting against the door. I was nearer to Payne than I was to Mrs. Surratt.

Q. What did Mrs. Surratt reply?

A. Well, I might not have heard that. The remark was made afterwards that——

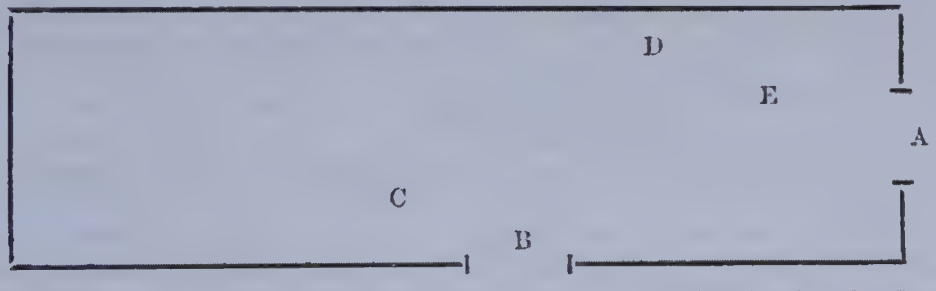
Mr. MERRICK. No matter about that.

WITNESS. I will repeat that I was nearer to Payne than I was to Mrs. Surratt. She spoke in a very low tone of voice.

Q. I understand that at that time you were standing with your arm upon the door, and that Payne was behind your arm close to you?

A. Yes, sir.

(Witness here prepared a diagram of the hall, showing the exact locality of the doors and the relative positions of Payne, Major Smith, and himself as Mrs. Surratt and the two young ladies left the parlor and passed out into the street. We present it below:



REFERENCES: A—Front door. B—Parlor door. C—Major Smith. D—Payne. E—Witness, Morgan.)

WITNESS, explaining the diagram, said: Payne was just behind me as I stood with my arm against the door, which was partially opened; the door opening to the right. I was between Payne and the door. Major Smith stood near the parlor door, just in the position represented by the letter C on the diagram. The party passed in front of me as they went out.

Q. Were you close enough to hear everything that passed?

A. I could if I had paid particular attention. I had my eye on Payne all the time.

Q. Were you not on the watch, listening to everything that passed at that time? Wasn't it very important for you to hear everything that was said?

A. Yes, sir. I did not attach so much importance to that, however, as I did to keeping an eye to the movements of Payne. I left Captain Wermerskirch and Major Smith to attend to Mrs. Surratt.

Q. Did Mrs. Surratt stop at any time after Major Smith spoke to her, or did you pass her right out of the house?

A. She might have stopped on the parlor sill and I could not have seen her whole body.

Q. While they were in the act of passing out, did you see Mrs. Surratt take a step out into the hall, throw up her hands, and make some exclamation?

A. No, sir; I cannot say I saw her. She might have done so in the parlor.

Mr. BRADLEY. I speak now of what occurred in the hall.

WITNESS. I saw nothing of the kind in the hall.

Q. Describe as well as you can the manner in which Payne was dressed that night.

A. He had on black pants, a gray vest, a gray coat, and part of a shirt sleeve or the leg of a drawer as a hat, with a pickaxe over his shoulder. This shirt sleeve was of gray flannel—what they call gray cotton flannel.

Q. Describe his appearance as well as you can; whether he appeared to be greatly exhausted, or was fresh and vigorous.

A. He seemed to be greatly exhausted. I was particularly impressed with the fact.

Q. State whether his clothes were much soiled or not, and in what respect.

A. The bottom part of his pants on both legs was very much soiled, and his boots were wet, as if had been going through swamps.

Q. State, if you recollect, whether the coat was apparently worn or nearly new.

A. I could not tell that. It was not bran new, and it was not an old coat.

Q. State the condition of the light in that hall, and also its position.

A. The light was low at first.

Mr. BRADLEY. I mean at the time the ladies were taken into custody and were passed out of the house.

A. I cannot recollect. It might have been bright. We sometimes lowered it, and then again at other times brightened it.

Q. Was or not the light very low when you went in?

A. It was low when Payne entered.

Q. Do you recollect the light being raised after Payne got there, until the ladies had gone out and got into the carriage.

A. I think it was raised about that time.

Q. When you began your search?

A. I think before that. I cannot recollect distinctly as to the moment when it was raised.

Q. Do you recollect whether Payne was sitting or standing in the hall?

A. He was standing a long while. I finally told him to take a seat. There was one seat in the hall.

Q. I mean before the ladies went out?

A. He was standing then.

By Mr. PIERREPONT:

Q Where was Payne in reference to you when Mrs. Surratt went out?

A. Payne was close up to me.

Q. Did Payne make any reply when Mrs. Surratt leaned a little back in the manner you have described, and said to you, "I am glad you officers came here to-night, as that man with a pickaxe came to kill us?"

A. No, sir.

Mr. BRADLEY. Was it said loud enough for him to hear?

A. She did not speak very loud. It was at times difficult to understand what she did say. She had occasionally to be asked to repeat two or three times.

Q. Was this remark spoken in a confidential tone?

A. No, sir; but she seemed to speak in a low tone.

Mr. BRADLEY. Did she seem to be agitated?

A. No, sir, she was not at all agitated.

Q. Payne did not make any reply to this remark of hers?

A. No, sir.

Mr. BRADLEY. Did he hear it?

A. I could not tell what he heard.

JOHN W. PETTIT recalled.

By the DISTRICT ATTORNEY:

Q. Will you be kind enough to examine this whistle (handing witness the whistle referred to by witness Morgan) and state if you have seen it before?

A. I never saw it before to-day. It is a dog whistle.

Q. Did you hear it?

A. I do not know whether I heard this whistle or not; I heard a sound.

The DISTRICT ATTORNEY. I ask you if you heard any one blow on that whistle to-day?

A. Yes, sir; I heard you blow on it to-day.

Q. I will ask you if that sound resembled the one which you have already testified as having heard at the theatre?

Mr. MERRICK. May it please your honor, is not this degenerating into a farce?

Mr. PIERREPONT. There is no farce about it.

Mr. MERRICK. It is getting to be very much like one.

The DISTRICT ATTORNEY. I submit, sir, it is competent evidence.

Mr. BRADLEY. The court will say.

The DISTRICT ATTORNEY. It is not our purpose to practice a farce, or to ask anything that we deem to be improper. The witness has already testified to hearing a whistle near the theatre on that night, and shortly afterwards learning of the assassination of the President. This whistle has been found in the possession of a person whom we charge to have been implicated in this conspiracy. He can state to the court whether the sound which he heard upon that occasion resembled the one which he heard from this whistle to-day.

Mr. PIERREPONT. Suppose he had found an Alpine horn in the room, the principle would be the same precisely.

Mr. BRADLEY. Suppose you had found a drum.

Mr. MERRICK. And beat on the drum, and ask if that sounded like it.

Mr. BRADLEY. Have you a very accurate musical ear?

WITNESS, (smiling.) I have a taste for sweet sounds.

The COURT. I do not see that there can be any reliance placed upon testimony of this character.

The DISTRICT ATTORNEY. We submit whether the question as to the weight of such testimony is not a question for the jury. We deem it our duty in a case of this kind, indeed in every case involving life and liberty, to offer in evidence to the jury every fact which will tend to aid them in coming to a correct conclusion. I hope, sir, and I am sure, your honor will not treat the matter with the levity that counsel seem disposed to.

The COURT. Certainly not; I have no disposition to treat this matter with levity at all.

The DISTRICT ATTORNEY. I was sure not, sir. I repeat that we look upon it as proper evidence. It is for your honor to determine, however. This witness has distinctly testified that he on that night heard a whistle—

Mr. PIERREPONT. Heard a signal whistle.

The DISTRICT ATTORNEY. Yes, sir; heard a signal whistle, and a few moments afterwards heard of the assassination of the President. He states that he was at that time residing very near Ford's theatre—just in the rear of it. Certainly then, sir, it is a matter of very great importance for the jury to know whether the sound which he heard on that occasion resembles the one made by this whistle.

The COURT. We will dispose of the matter by getting the witness to make a sound with this whistle, and then have him state whether the sound thus produced resembles the one he heard on the night of the assassination near the

theatre, which he said in his former examination he believed to be a signal whistle.

(To this ruling counsel for the prisoner reserve an exception.)

Witness then blew the whistle, and said:

It was a sound similar to that. (Laughter.)

Mr. MERRICK. This is ridiculous.

Mr. PIERREPONT. I do not see anything ridiculous about it.

Mrs. MARY BENSON—residence, Linsing, Canada—sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?

A. Linsing, in Canada.

Q. You are the wife of Dr. Benson, a practicing physician in that city?

A. Yes, sir.

Q. You formerly resided in New York?

A. Yes, sir.

Q. How long have you been married to Dr. Benson?

A. Two years.

Q. What was your name previous to the marriage?

A. Mary Hudspeth.

Q. Was your former husband living in the year 1865?

A. He was not.

Q. You were a widow then?

A. Yes, sir.

Q. State if you were in New York city in the month of November, 1865.

A. I was there in 1864.

Q. What time in 1864?

A. In November, 1864.

Q. Do you recollect anything that impresses the date on your mind?

A. Yes, sir.

Q. What time in November was it—the first or last part?

A. It was about the 14th, I think.

Q. What is it that enables you to recollect the month?

A. The circumstance of picking up letters in regard to the assassination?

Q. Do you recollect of General Scott and General Butler being in the city at that time?

A. General Butler had been in the city, but he had left on the morning of the day I found the letters.

Q. Was General Scott there on that day?

A. Yes, sir; he was at the Hoffman House; he resided there.

Q. Do you remember, madam, during that visit in November, riding on the Third avenue cars?

A. I do.

Q. Who was in company with you at that time?

A. My little girl, my daughter, was with me.

Q. How old was she?

A. She was nine years of age at that time.

Q. Was any one else in company with you and your daughter at that time?

A. There was not.

Q. I will ask you if you saw anything on the cars at that time, or heard anything, that attracted your attention; and if so, state what it was.

A. There were two gentlemen in the car, sitting next to me. One of these was an educated man, and the other was not. I overheard their conversation, at different times, when the car would stop.

Q. State, if you please, the appearance of these parties.

A. One of them was a very fine, gentlemanly-looking man.

Q. Did you observe his hand?

A. Yes, sir.

Q. Did that attract your attention?

A. Yes, sir; he had the hand of a man who was never obliged to do any work; had a smooth, white hand. It was quite a small hand.

Q. Did you observe anything about his face that attracted your attention?

A. My seeing that he was disguised was what first attracted my attention. In the jarring of the car, his head was struck, which had the effect to push forward his hat. He seemed to have a wig and false whiskers on, and these were pushed forward at the same time, showing the skin underneath the whiskers to be fairer than the front part of his face, which seemed to be stained with something. The front part of his face was darker than that under the whiskers.

Q. State if there was anything peculiar about either of them on the face.

A. There was a scar on the right cheek of the gentlemanly looking man, just underneath where the whiskers were. When the whiskers were pushed forward, I could see the scar; that was on the side next to me.

Q. Can you give us a description of the other one?

A. The other person was a large man, a common-looking man. He was a shorter and a stouter man than this one. The one who had the scar on the face called him by the name of Johnson.

Q. Will you state if both, or either of them, were armed in any way; and if so, what arms they had?

A. The well-dressed gentleman, the one who sat next to me, put his hand back to get letters out of his pocket, and I saw that he had a pistol in his belt.

Q. Did you get a close observation of the pistol?

A. No, sir; I did not. I only saw it was a pistol.

Q. Will you state if you heard them say anything at that time to each other; and if so, state what?

A. I heard the gentleman with the scar say he would leave for Washington day after to-morrow. The other one said he was going to Newburg, or Newbern, that night.

Q. Was anything else said that night?

A. The man named Johnson was very angry because it had not fallen upon him to do something that he had been sent as a messenger to direct this other man to do.

Q. Why did he say he was angry?

A. He seemed to be angry. He said he wished it had fallen upon him instead of on this other man to whom he had brought the message to go to Washington.

Q. Who left the cars first, you or this party?

A. They both left before I did.

Q. Immediately upon their leaving the car, did anything happen, or was your attention directed to anything?

A. I saw them exchanging letters in the cars. I had letters of my own to post, and was then on my way to the post office. As I was leaving the car my little girl picked up a letter at the edge of my dress and gave it to me, with the remark that I had lost one of my letters.

Q. You saw her pick it up?

A. Yes, sir. It was just under the edge of my dress.

Q. What did you do when this letter was handed you?

A. I took it without noticing that it was not one of my own, and put it in the pocket of my coat with my other letters, and kept it there until I got to the brokers, where I was going with some gold, near Nassau street. In putting my hands into my pockets to get some money, I took out the letters that I had in there. I instantly saw these letters in a blank envelope, and knew they were not mine. Being in an unsealed envelope I opened them to see what they were, and found that they related to this plot.

Q. What did you then do with them?

A. I saw General Butler's name was mentioned in the letter, and knowing very few persons in New York, having been there but a short time, the first thought I had was to give them to him. As his name was mentioned in the letter, I thought that he would pay more attention to them than any one else. I had seen by the newspapers that he was in the city at the time. I went up to the Hoffman house, where he had been stopping, and inquired for him.

Q. Did you find him there?

A. No, sir; he had left that morning. I then asked for General Scott. He was not well, but said he would see me. I said I wanted to see him with regard to something of importance. When I entered the room, I told him of what I had found, and the circumstances connected with the finding. He asked me to read the letters to him. I did so, and he said he thought they were of great importance. It was nearly dark at the time.

Q. What did you do next?

A. I did what he told me—took them to General Dix.

Q. Did you see them afterwards?

A. I never saw them afterwards until I saw them at the assassination trial.

Q. You were a witness before the conspiracy trials at the arsenal in this city?

A. Yes. sir.

Q. These letters were exhibited to you then?

A. Yes, sir.

Q. Was there anything on the envelope?

A. There was nothing at the time.

Q. When you were examined as a witness, before the military commission, did you then recognize them?

A. Yes, sir.

Q. Do you think you would know those letters if you were to see them now?

A. I think I would.

Q. Just examine these and state if they are the letters. (Handing witness two letters.)

A. They look as if they were the same. (After further examination,) they are the same.

The DISTRICT ATTORNEY. I now propose to offer these letters in evidence.

Mr. BRADLEY. We object to them, as having no connection with the prisoner.

The COURT. The letters will be read, but if the prosecution fail to connect them with the prisoner, of course they will be ruled out.

Mr. BRADLEY. That is, after the poison has got into the minds of the jury we will have to do all we can to get it out.

Mr. PIERREPONT. There will be no poison in them if they are found to have no connection with the prisoner.

Mr. BRADLEY reserved an exception.

The letters were then read as follows:

DEAR LOUIS: The time has at last come that we have all so wished for, and upon you everything depends. As it was decided before you left, we were to cast lots. Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback. *Abe* must *die*, and *now*. You can choose your weapons—the cup, the *knife*, the *bullet*. The cup failed us once, and might again. Johnson, who will give you this, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his grayhaired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain head, he will upon some of the blood-thirsty generals. Butler would suit him. As our plans were all concocted and well arranged, we separated; and as I am writing—on my way to Detroit—I will only say

that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete that, without *one* knew *your face*, no police telegraphic despatch would catch you. The English gentleman, *Harcourt*, must not act hastily. Remember he has *ten* days. Strike for your home, strike for your country; bide your time, but strike sure. Get introduced, congratulate him, listen to his stories—not many more will the brute tell to earthly friends. Do anything but fail, and meet us at the appointed place within the fortnight. Enclose this note, together with one of poor Leenea. I will give the reason for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the West. You will, probably, hear from me in Washington. Sanders is doing us no good in Canada.

Believe me, your brother in love,

CHARLES SELBY.

St. Louis, *October* 21, 1864.

Dearest Husband: Why do you not come home? You left me for ten days only, and you now have been from home more than two weeks. In that long time only sent me one short note—a few cold words, and a check for money, which I did not require. What has come over you? Have you forgotten your wife and child? Baby calls for papa till my heart aches. *We are so lonely* without you. I have written to you again and again, and, as a last resource, yesterday wrote to Charlie, begging him to see you and tell you to come home. I am so ill—not able to leave my room; if I was, I would go to you wherever you were, if in *this world*. Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.

LEENEA.

Cross examination:

By Mr. Bradley:

Q. You say you now reside in Canada?
A. Yes, sir.
Q. How long have you resided there?
A. It will be two years next month since I left New York.
Q. Were you in Canada when summoned to come here?
A. I was.
Q. Do you recollect who served the process?
A. There was no process served. There was a gentleman sent there, or, at least, the United States consul at Toronto came to me in Canada.
Q. No subpœna was served on you?
A. No, sir.
Q. You were not required by the process of this court to come?
A. I was asked to come. I suppose I was not required unless I was willing to come.
Q. State as to whether there were any conditions as to your coming?
A. There were conditions made that my expenses were to be paid here and back; and I was to be given so much a day while I was here.
Q. How much *per diem?*
A. Twenty dollars. I thought that was very little, because I left my family and came here.
Q. Did any one come with you?
A. Yes, sir; my husband.
Q. Were his expenses also paid?
A. Yes, sir.
Q. Is he to receive any compensation?
A. No, sir; not anything except his expenses.

By a JUROR:

Q. Do you mean $20 a day as the amount you are to receive?
A. Yes, sir; $20 *per diem*.

By Mr. PIERREPONT:

Q. Where did you make this condition?
A. In Canada.
Q. With whom?
A. With Mr. Thurston.
Q. Was he the consul?
A. Yes, sir.
Q. You say you left home at a great deal of inconvenience?
A. Yes, sir; and had he not consented to give me that, I would not have come.
Q. You refused to come unless he did give you that?
A. Yes, sir.

By Mr. BRADLEY:

Q. Has anything been said about that arrangement since you have been here? Has it been confirmed?
A. No, sir; I have not received any of the money.

HENRY R. McDONOUGH—residence, Washington—sworn and examined.

By Mr. PIERREPONT:

Q. State what your occupation was in December, 1864?
A. I was cashier of Adams's Express Company in this city.
Q. State whether John H. Surratt came there as clerk in that month?
A. He did.
Q. At what date?
A. 30th December.
Q. Have you your books with you?
A. Yes, sir.
Q. How long was he in your employment?
A. From the 30th of December until the 13th of January.
Q. About two weeks?
A. Yes, sir.
Q. For how long a time was he paid?
A. For two days.
Q. Did he ever come for the rest of the money?
A. He did not.
Q. Was he discharged, or did he leave?
Mr. BRADLEY. Have you any knowledge of the facts?
A. Only from hearsay.
Q. He didn't come back?
A. No, sir.
Q. Did he ever draw any money?
A. Only for the two days.
Q. What fact is there about those two days?
A. I paid him in person and took his receipt for the money.
Q. What two days were those?
A. The 30th and 31st of December.
Q. Did you take his voucher?
A. Yes, sir.
Q. At what rate was he to be paid?
A. Fifty dollars a month.
Q. Did he sign any receipt?
A. He did.
Q. Have you it?

A. It is in Baltimore.
Q. You haven't it here?
A. It is at the company's office there.
Q. Why is it in Baltimore?
A. There is where the monthly accounts are settled and the vouchers filed.
Q. In your establishment at that time, who was the person to whom it was necessary to make application for leave?
A. The agent.
Q. What was his name?
A. C. C. Donn.
Q. Where does he live?
A. In Philadelphia.
Q. Have you seen him lately?
A. About two weeks ago.
Q. Do you recognize the prisoner?
A. Not positively.
Mr. BRADLEY. It was him; there is no doubt about it. We have no hesitation in admitting any truths. I will ask the witness whether there is anything on the books to show when he left.
The court here took a recess until to-morrow (Thursday) morning, at 10 o'clock.

THURSDAY, *June* 27, 1867.

The court met at 10 o'clock a. m.

WILLIAM R. CONGER sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?
A. I have been residing all my life in St. Albans, Vermont.
Q. State where you were on the Tuesday or Wednesday following the assassination, and what was your occupation at that time.
A. I was in St. Albans, Vermont, and was keeping a saloon there, near the depot.
Q. Have you seen the prisoner since you have been in the city?
A. Yes, sir. I believe he resembles a man I saw in St. Albans.
Q. State if you recognize him now.
A. His nose, eyes, forehead, height, and actions appear to be those of a man I saw at St. Albans.
Q. State whether he was alone, or whether there was any one with him when you saw him there.
A. He had a man in his company.
Q. Do you think you would recognize him if you were to see him?
A. I think not; I did not take as much notice of him as I did of this gentleman.
Q. Why was your attention directed more particularly to him?
A. After the assassination, I thought he was one of the men. I was after him, and tried to have him arrested. I crossed his path some two or three times in coming from the depot to my shop.
Q. State about what time that was.
A. My impression is that it was between eight and eleven o'clock in the morning. I could not state the time.
Q. Do you recollect what day of the week it was?
A. I could not state.
Q. You have stated to the jury that you were after this person, endeavoring to have him arrested as one whom you suspected; did you speak of it to any one?

A. I did not at that time. I followed him to the depot and tried to find an officer there. From that I started up town to find an officer. On my way there, before I reached the American Hotel, I came across Albert Sowles.

Q. Who is Albert Sowles?

A. He is cashier of the First National Bank.

Q. Did you speak to any one else?

A. I turned about with him, and went to the depot and pointed out this gentleman to him.

Q. Did you see Mr. Edward A. Sowles about that time?

A. I did. I asked Mr. Sowles if any one——

Mr. MERRICK. Do not repeat your conversation with him.

WITNESS. We started from there and went back to the American House. I went with him as far as the jail to find an officer, but I could not find one, and returned back in front of the American, where I met Albert Sowles and his brother.

Q. What is his brother's name?

A. Edward A. Sowles, a lawyer.

Q. Did you succeed in arresting this man?

A. I did not.

Q. Whereabouts and at what time did you last see this man?

A. The last I saw of him was at the depot, when I returned back there.

Q. How did he escape you?

A. I could not say. I could get no officer. I went to the cars, went to the west side of them, and round on the east side of them, and through the cars, but saw this gentleman no more.

Cross-examination by Mr. BRADLEY:

Q. What date do you think this was?

A. I could not say.

Q. Cannot you fix the day of the week?

A. As near as I can fix it it was some three or four days after I heard of the assassination of the President. From that time I was on the lookout; I was near the depot.

Q. Were you there when the cars came in that day?

A. I could not say. The only way I recollect that day was that on Tuesday morning I was to receive oysters, and I have no doubt that I was there, but I could not say.

Q. You cannot tell whether you went to the cars the morning you saw this man or not?

A. I cannot.

Q. Can you tell what time this man left?

A. No, sir.

Q. Can you tell whether there was any connection between St. Albans and Montreal immediately on the arrival of the cars from the south going to Montreal?

A. When the cars were late——

Q. My question was whether there was a regular connection there habitually?

A. I cannot tell whether there was or not.

Q. You say you have a saloon near the depot?

A. Yes, sir; the first door east of the depot.

Q. Can you tell from memory whether or not the cars that came up from Burlington on the east side of the lake formed a connection there with the cars going on to Montreal?

A. I cannot.

Q. You cannot recollect whether passengers coming up the lake to St. Albans staid at the depot or went on?

A. I could not at that time.

Q. You say there were two persons together; did they continue together all the time?

A. They did until I followed them into the depot.

Q. Do you know who came up with the train that day as conductor?

A. I do not.

Q. Do you know the conductors on the trains running up and down at St. Albans?

A. Yes, sir.

Q. Who were the conductors at that time?

A. Hobart and White were, and there were a number of others. I could not name the others now who ran at that time.

Q. I understand you to say that you were on the lookout, on the arrival of the train, for the assassins of the President?

A. I was looking out for such men. I was near by the depot, and for that reason my attention was drawn to every stranger that arrived at the place.

Q. And you cannot tell now whether the train stopped there, or whether it connected and went on towards Montreal?

A. The train was in the depot when I followed the gentlemen in, headed north towards Montreal. Whether there was an engine on or not I could not say.

Q. You did not see the train arrive?

A. I do not recollect.

Q. Where did these gentlemen come from—in what direction?

A. The first I saw of them, I stood in my shop door and saw them on the sidewalk.

Q. Going in what direction?

A. They were going from the depot.

Q. There were two of them coming, and no more?

A. Two and no more. There were other gentlemen on the walk—plenty of them up and down; they were going right side by side.

Q. Were there other people walking close by them?

A. No, sir, I think not; they were together.

Q. Walking in the same direction from the depot, up into town?

A. They were walking from the depot towards the St. Albans House.

Q. Did you follow them?

A. I did not then.

Q. When did you lose sight of them?

A. I turned; there were some men in the shop. I stood in the door as they went past, but went back into the shop.

Q. How far were they from you?

A. Five or six rods.

Q. A rod is five yards and a little more, isn't it?

A. Yes, sir.

Q. You lost sight of them when you turned to go into the shop; when did you see them again?

A. I got rid of these men; I cannot say how long it was. I stood again in the door, and they passed by towards the depot.

Q. How long were you in the shop?

A. I could not say. It was not more than twenty minutes until they passed my shop going towards the depot.

Q. Had any train left the depot in the mean time?

A. I could not say.

Q. What did you do then?

A. I locked my door and followed them.

Q. Where did they go then?

A. They went towards the depot. I went in front and came in the rear of them. As they passed by I turned about and came in the rear of them.

Q. Which way did you go then?

A. They took a circle round across the track towards the depot; I cut across towards the depot where they were making for.

Q. Did you come up with them again?

A. I did not cross their path again.

Q. Did they enter the depot?

A. Yes, sir.

Q. Where did you leave them?

A. I left them in the depot.

Q. When you returned with Mr. Sowles, where did you see them?

A. I saw them in the depot.

Q. Had any train left in the mean time?

A. I cannot say.

Q. Now describe the dress of the two men.

A. The taller one had light pants, light vest, and a dark blue or black coat; a black fur hat.

Q. You mean a high-crowned hat?

A. What we term a stove-pipe hat. The short man had light clothes; sandy complexion. I could not say what kind of a hat.

Q. Were all his clothes light?

A. Yes, sir; coat, vest, and pants.

Q. Could you say whether they were made of linen or woollen stuff?

A. I cannot say; I did not take so much notice of that man.

Q. Had you had any description of any of these men who were supposed to have been concerned in the assassination of the President?

A. I had not, only what I had seen in the papers; in the Burlington Times.

Q. When had you seen that?

A. Previous to the time I was after these men.

Q. How long?

A. I could not say.

Q. One or two days before?

A. I am unable to say the time; it might be three or four days; I could not state the exact time.

By a JUROR:

Q. Was it after the assassination?

A. Yes, sir.

By Mr. MERRICK:

Q. I understood you three or four days after, and that you saw it in the Burlington Times.

A. Yes, sir.

By Mr. BRADLEY:

Q. How long after you saw the description in the Burlington Times before you saw these men?

A. I could not say.

Q. One or two days?

A. It might have been that day, and it might have been the day before. I took the Burlington Times at my shop regularly, and I must have had that paper that morning.

Q. Then how long had you been on the lookout for men going up there?

A. It could not have been long.

Q. If you received the Burlington Times that day, it must have come by that train?

A. It must have come by that train.

Q. Then you were standing at the door when you first saw these men; how came you to be on the lookout for these men?

A. I think I saw a description of that man in the paper.

Q. You think you saw it that morning?

A. I cannot say for certain that it was that morning; it is my impression that it was that morning.

Q. I understand you you got the paper by that train, and you cannot tell at what hour in the morning the train arrived?

A. The morning train got in very early. I used to come to my shop in the morning at half-past four and stay until the trains were all out, and then I would go back and have my breakfast.

Q. Then did I misunderstand you that you had been on the lookout for these men from the time you heard of the death of the President?

A. For men.

Q. What men?

A. Strangers and the like of them.

Q. Was there not a constant stream of strangers passing through St. Albans?

A. Yes, sir; and there was considerable excitement about those days.

Q. If you had been on the lookout for men, and did not get that description till that morning, you were not on the lookout for that particular man?

A. No; I was not for that particular man I saw described in the papers. When I saw the description I was on the lookout, and as quick as my eye struck that man I made up my mind he was the man.

Q. You are quite confident about the dress of the tall man?

A. I am.

By a JUROR:

Q. Have you the paper which contained that description?

A. It was here yesterday; whether it has gone home or not I do not know.

Q. Where is it now?

A. I think it is on its way home?

By Mr. MERRICK:

Q. How came you to send it home?

A. It was not in my possession.

Q. Who sent it home?

A. The officer who had it.

Q. Who was the officer?

A. I cannot call his name now.

Q. Where does he belong?

A. He belongs in St. Albans.

Q. You live there, and yet you cannot tell the name of that officer?

A. He came there this spring, after I moved away from home.

By Mr. PIERREPONT:

Q. Could you tell his name if you were to hear it?

A. Yes, sir.

By Mr. BRADLEY:

Q. When did you last see that officer?

A. Last night.

Q. Where was he stopping?

A. He stopped at the Ebbitt House.

Q. You have seen him this morning?

A. No, sir; he left on last night's train, I believe.

Q. And you allowed him to take that paper with him?

A. He had it in his possession, and took it.

Q. Do you remember the date of that paper?
A. The 18th of April. 1865.
Q. That is the paper you saw?
A. That is the description of the man I saw.
Q. I want to know whether it is that paper you saw on the 18th?
A. Yes. it was.
Q. You recollect it?
A. That must have been it.
Q. I want to know whether you recollect?
A. That must be the date of the paper. I saw the description of the man in that paper, and I picked him out in the street as the man.

By Mr. PIERREPONT:

Q. Who did you understand at the time was the man you were seeing?
(Question objected to by Mr. Bradley.)
The COURT. I suppose the question is proper, if it is put in the proper form.
WITNESS. The man's name is Booth.
Mr. BRADLEY. I hope the court will caution the witness not to answer when he is stopped.
Q. Who did you suppose it was that you saw at that time?
(Question objected to by Mr. Bradley as irrelevant.)
The COURT said the question could be asked whether the prisoner was the party he saw.
Mr. PIERREPONT. My question was, what was the name of the person he supposed he then saw from the description?
Question disallowed in that shape.
Q. Have you ever seen Booth since?
A. I never saw him.
Q. You were looking for a man, from what cause?
A. From the description I saw in the Burlington Times.
Q. A description of whom?
A. I cannot say now.
Q. Who did they say it described?
A. I could not recollect who it was. I have not seen the paper to read it.
Q. Who did you speak of as Booth?
A. That was a description, as I understood, of Booth.

By Mr. BRADLEY:

Q. Then the man you were looking for was Booth?
A. I think the description in the Burlington Times—the one I came across—represented Booth.
Q. That is, you saw the description of Booth in the Burlington Times, and you were on the lookout for Booth; you saw a man who looked like Booth and you wanted to arrest him?
A. Yes, sir.
Q. Do I understand that Booth was described in the paper you saw?
A. I cannot say whether it was Booth or who it was.

EDWARD A. SOWLES sworn and examined.

By the DISTRICT ATTORNEY:

Q. Where do you reside?
A. St. Albans, Vermont.
Q. Do you know a gentleman there by the name of Conger, a carpenter by occupation?
A. I do.
Q. Do you recollect his calling your attention to any person about the 18th of April, 1865?

A. My attention was called to the fact that there were two persons, or one person at least, who was supposed to have been connected with the assassination of the President, and that he was at the American Hotel, St. Albans; in short, he was supposed to be Booth. I went to the American Hotel with my brother, Albert Sowles. We saw two persons there who were pointed out to us as the supposed persons.

Q. State when this was.

A. This was on the Tuesday following the assassination.

Q. What day of the month?

A. I think it was on the 18th.

Q. What time of the day was it?

A. It was in the forenoon.

Q. You cannot state more definitely the time?

A. I do not know that I can state the hour. I passed through the bar-room of the hotel. They were then in the bar-room. About the same time I learned there was a photograph of this supposed person in the hotel. We applied to the proprietor of the hotel and he showed us the photograph.

Mr. BRADLEY. Photograph of Booth?

A. Supposed to have been Booth. After passing through that room and seeing the photograph we came out, and as we came out these two persons passed out and went down by the depot, which is in what is called Lake street, perhaps thirty or forty rods off. During this time we met Mr. Conger.

Mr. BRADLEY. You mean when you were going to the depot?

A. I think we had seen him before. I would not be positive about that. He wanted to know if this man could not be arrested. We went into the depot, and there we saw these two persons again. While we were there, there was a train of cars standing upon the track in the depot, and my recollection is that it was about ready to leave for the north, towards Montreal. After remaining there a short time, we returned. On my return I went to the First National Bank with my brother, who is the cashier. I might say that I did not see that person, or these persons, after that time. I have a faint recollection that they took the train, but I would not be certain about that.

Cross-examined by Mr. BRADLEY:

Q. Can you describe how these persons were dressed?

A. There was a tall one who had light pants, light vest, and, I should say, dark coat.

Q. Do you remember his hat?

A. My recollection is that he had on one of these silk hats.

Q. What we call a stove-pipe?

A. What we call a stove-pipe.

Q. Your attention has been called to the prisoner; has he been pointed out to you?

A. Yes, sir.

Q. Do you identify him as the man you saw?

A. All I can say about that is that this person had black hair, rather long, and black moustache.

Q. Black whiskers?

A. Yes.

Q. What is there that fixes this as the 18th rather than the 21st of the month?

A. I can tell you in regard to that. You will remember that I stated in my examination in chief that I looked at a photograph. I had a conversation at that time in regard to the manner or the time in which that photograph got there. Persons who were there raised the question, and I myself expressed some doubt, about its getting there so soon. I had travelled over the route

from Washington to St. Albans previous to that, and I told them there was no trouble in its getting there in that time. They said the government would have to get up a photograph. My reply was that there was sufficient time to get it up and have it there by the time we saw it. I learned at the same time that the photograph had come in that morning.

Q. Did the photograph correspond in some measure with the man you were looking at?

A. As far as hair and whiskers were concerned it did.

Q. Do you think you would know that man were you to see him?

A. I cannot tell whether I would know him or not with the black hair and whiskers. If you ask me whether I could recollect him, I should answer I do not think I could.

Q. Perhaps you could when some circumstances were brought to your mind.

A. I only saw him a short time, and whenever I tried to see him full in the face he would disappear.

Mr. MERRICK. We shall direct the marshal to summon you as a witness for the defence.

WITNESS. I think it would be useless to summon me upon the part of the defence to identify the person who was there, because I could not do it. I could only state these facts in regard to his general appearance.

Q. You state that that photograph could get there after the assassination from Washington city; do you know whether it came by mail, or how?

A. I can only state what the proprietor of the hotel said. I do not know except what he told me.

Q. In calculation of the time the photograph would take coming from Washington, what time did you start it from Washington relative to the assassination, which took place Friday night about ten o'clock?

WITNESS. The question would arise then when they were taken.

Mr. MERRICK. You say you had information that there was time enough for it to get to St. Albans; in the formation of that opinion, at what time relative to the assassination did you start it from Washington city?

A. I do not know that I calculated that; that was merely a conversation that we had. I could say that if it left here Sunday night there would be no difficulty in its getting there at that time, and perhaps not if it left on Monday morning.

Q. You say you do not know how it got there, except what the landlord told you. How did he tell you it got there?

Question objected to by the district attorney.

Mr. BRADLEY. We will come directly at it, then. Was it not brought there by one of the detectives?

A. That I do not know. He did not tell me that.

By Mr. PIERREPONT:

Q. You stated that a photograph of Booth, or one claiming to be such, was there; did you look at the photograph?

A. Yes, sir, I did.

Q. Did you think that photograph was the photograph of the man you saw with black hair?

A. We thought we could see some resemblance.

Q. Did you think it was the man?

A. We thought so; otherwise we should not have made any effort to arrest him.

Q. After you saw the man?

A. I had doubts all the time.

Q. You stated his hair and moustache were black; did you observe whether he had any hair on his chin?

A. I could not state that.
Q. Had he a monstache?
A. He had.
Q. He had no side whiskers?
A. No, sir.
Mr. MERRICK. Did not you say he had whiskers?
A. I do not think I did; if I did, I wish it to be corrected. I have no recollection of his having whiskers.
Mr. PIERREPONT. Tell the jury whether this black moustache and black hair you saw there were the natural color, or whether they were colored.
A. I could not say; they were very black.

Mrs. E. W. MCCLERMONT—residence, Washington city—sworn and examined:

By the DISTRICT ATTORNEY:

Q. How long have you lived in Washington?
A. I have lived in Washington most of my life, since I was a child.
Q. Were you living in the city in 1864?
A. I was; on the Island, on B street.
Q. Do you remember any occurrence at that time which had any connection with the assassination?
A. Yes, sir.
Q. Please state what it is, as distinctly as you can?
A. It was in April, 1864, as near as I can recollect, between the 12th and 15th of April.
Q. Where were you?
A. I came from the Island, and was standing on the north side of the avenue, on the corner of Tenth street, waiting for a car to go to Capitol Hill.
Q. About what time of day was it?
A. As near as I can recollect, in the forenoon.
Q. Now tell the jury what you saw and heard?
A. While waiting for a car, there were two men standing within a few feet of me, who seemed to be impatiently waiting for some one.
Q. Please state what was said.
A. In a few moments these were joined by another; I turned my head away and do not know whether this person who joined them came down Tenth street or not. They spoke in an under tone, and the only remark I heard, in speaking to the one who joined them, was "Jim." Then I heard the President's name mentioned; one of the men spoke of his coming from the Soldier's Home; then I heard them mention the word "telescope rifle." One of these answered and said "His wife and child will be along." Another replied, "It makes no difference; if necessary, they too could be got rid of." At this I turned, and one of them saw I was lookng at them; they ceased conversation and walked on the avenue.
Q. In what tone was the conversation?
A. It was in an under tone; I could just get the words in monosyllables; they were not standing there more than five or ten minutes.
Q. Did you hear anything more than you have stated?
A. No, sir; I did not wish to appear to be listening—they made the remarks, and I could not avoid hearing them.
Q. How many were they there talking together?
A. Three.
Q. The third one came down what street and joined them?
A. Tenth street, I believe.
Q. Did you ever see any of these men afterwards?
A. Yes, sir.
Q. Where?

A. At the conspiracy trial.
Q. Now state who of these men you saw at the conspiracy trial.
A. Herold and Atzerodt were the two men who were standing on the corner.
Q. And the one that came down Tenth street, did you see him at the trial?
A. No, sir.
Q. Please decribe to the jury the man who came down Tenth street. Was he an old man or a young man?
A. He was a young man; at the time I thought I had seen him before, but could not place him.
Q. Was he tall or short?
A. Medium height.
Q. How was he dressed? Was he well dressed or otherwise?
A. He was very genteelly dressed. I do not recollect much about his dress.
Q. You thought you had seen him before, do you know where you had seen him before?
A. Not then; I could not place him.
Q. Can you place him now?
A. Yes, sir; I have seen him perform here, and also at Philadelphia.
Q. What is his name?
A. John Wilkes Booth.

ALBERT SOWLES, cashier First National Bank, St. Albans, Vermont, sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. Where did you reside in April, 1865?
A. In St. Albans.
Q. Were you there on the Tuesday and Wednesday following the assassination?
A. I was.
Q. Do you know Mr. Conger, who just left the stand a few minutes ago?
A. Yes, sir.
Q. Describe, if you please, to the jury what occurred, and whether or not you and your brother, with Mr. Conger, visited the depot. State, distinctly, the circumstances of that visit on that morning.
A. I was going to the depot that morning, and was stopped by Mr. Conger, who informed me——
Mr. MERRICK. No matter what he said.
WITNESS. I went to the depot with Mr. Conger; it must have been three or four days after the assassination; I am not positive about the time of day; it was after nine o'clock; I go to the bank at nine o'clock. We went to the depot and a man supposed to be Booth, in company with another, was pointed out to me; these men immediately left the depot and went back to the American House; we followed after, went into the American House, and saw these men there a moment.
Q. What did you do then?
A. I remained in the American a short time and then returned to the depot. We went there again, and then I saw this man conversing with the shorter man on the steps of the depot; they were strangers to me.
Q. Describe the size, figure, face, and dress of the man you were particularly looking after?
A. He had on light pants, light vest; he had a tall hat, I think.
Q. What of his figure?
A. He was a tall man, quite straight and erect. He would weigh about 160 pounds, I should judge.
Q. Describe the shape and appearance of his face.
A. I do not know that I can exactly.

Q. As near as you can?
A. He had a black moustache; his hair was dark.
Q. Where did you last see him?
A. I saw him at the depot that day.
Q. You lost sight of him there?
A. Yes, sir.
Q. State whether he had whiskers or a goatee.
A. He had no whiskers, and I think he had no beard on his chin; I merely gave a glance at him, and cannot answer positively.
Q. State as nearly as you can the day of the month and day of the week.
A. I cannot; it was soon after the assassination.
Q. How many days?
A. I could not state; three or four days, probably.

Cross-examined by Mr. BRADLEY:

Q. Do you know whether a train runs north, or did at that time, on Sunday?
A. I am not aware of it.
Q. Did you see a photograph of the person pointed out to you as Booth?
A. I saw a photograph that was said to be Booth's.
Q. After seeing that photograph, did you follow this man you suspected to be Booth?
A. We went to the depot afterwards; yes, sir.
Q. This man preceding you?
A. Yes, sir; I went to the depot; I wanted to see the man again.
Q. I understand you that shortly after you were at the American Hotel you went down to the depot; did you see the photograph at the American Hotel before the man went out, or just about the time he went out?
A. We were looking at the photograph in a room when this man came in, and the photograph was immediately laid aside.
Q. And you followed him?
A. No, sir; the man came to the door and turned around and went back. He went off to the depot and we followed him.
Q. Was there any resemblance between that man and the photograph, that induced you to follow him?
A. I was not positive.
Q. Was it sufficient to induce you to follow him?
A. I wanted another look at him; I did not get a full front view.
Q. How soon did the train start after you got down to the depot?
A. The train was standing in the depot, and I left the train standing there.
Q. You were looking for a man you supposed to be one of the assassins of the President, and saw him go into the depot. Did you see him go into a car?
A. No, sir.
Q. Did you see him go off in the train or not?
A. No, sir.
Q. And your suspicions were very strong?
A. I became satisfied it was not Booth.
Q. How did you become satisfied of that?
A. In my own mind; we were receiving despatches that Booth was being followed in another direction.
Q. And that satisfied you?
A. That was one thing.
Q. Did you yourself receive a despatch, or was it published at the telegraph office?
A. I went to the office with despatches.
Q. Did you go to the telegraph office between the time this man was pointed out and the time he left?

A. It was in my way. The telegraph office was in the depot.
Q. Describe that depot to the jury.
A. I can only say that it is a very large building.
Q. Closed in?
A. Yes, sir, with offices; a telegraph office and express office in it.
Q. What companies did it belong to?
A. To the Vermont Central and to the Vermont and Canada Railroad Companies.
Q. I suppose as a business man, and especially as the cashier of a bank, you know something about the arrival and departure of the trains. Do you know at what time the train came in at that time?
A. It was a morning train. I do not know the hour.
Q. How long did the early train lie there? Did it go directly on to Montreal?
A. It usually lies there a sufficient time to get refreshments.
Q. Twenty minutes is the usual time, is it not?
A. Yes, sir; that is the usual time.
Q. That train arrived that morning and stopped twenty minutes, and then went on to Montreal?
A. Yes, sir, it did, if it was on time.
Q. Have you gone to Montreal frequently to know the time it takes to run to Montreal from there?
A. Two or three hours.
Q. Two and a half hours?
A. Perhaps so.
Q. About that time did you leave St. Albans yourself and go in the morning train?
A. No, sir. I have never been to Montreal by the morning train.

By Mr. PIERREPONT:

Q. Have you ever seen a man since that time who looked like the man you saw that morning?
(Question objected to by Mr. Bradley, as not in response to anything drawn out by cross-examination.)
Mr. PIERREPONT. We will put it in chief.
Mr. BRADLEY. The court will decide whether that can be done.
The COURT. The prosecution can re-examine its own witness, which, of course, will reopen the cross examination.
Mr. BRADLEY. I only wished to have the point established—that we were entitled to cross-examine him in reply.
Q. Have you seen lately any man who resembles the man you then saw?
A. I think I see a man who resembles him in this court-room.
Q. Is he the prisoner?
A. Yes, sir.

By Mr. BRADLEY:

Q. By whom was the prisoner pointed out to you, when, and where?
A. I think I saw him come into the court-room Monday morning
Q. By whom was he pointed out, and with whom did you speak about it?
A. My brother and Mr. Conger were with me at the time.
Q. Any one else?
A. I think not.
Q. He was not pointed out to you in this court-room?
A. No, sir.
Q. At that time had he irons on his wrists in the custody of the marshal?
A. Yes, sir.
Q. And your attention was thus drawn to him?

A. Yes, sir.

Q. Now tell us the points of resemblance which strike you.

A. His general appearance, face, and eyes.

Q. Did you not tell us you had so slight a look at him that you could not tell whether it was Booth or not, and that you followed him because you wanted to get another look at him?

A. Exactly. I had seen him before.

Q. And now you tell us you can identify this man as somewhat like the man you saw there that morning?

A. Yes, sir; he resembles him in height and size.

Q. And you think this man weighs 160 pounds?

A. I thought he did.

Q. How about the man now?

A. I could not say.

Q. Did not you have a good look at him on his way over to the court-house?

A. Yes, sir.

Q. Cannot you tell better now, after looking at him, how much he would weigh than you could that man at St. Albans after your slight look at him?

A. I think he would weigh 160 pounds now.

LOUIS J. WEICHMAN sworn and examined.

By Mr. PIERREPONT:

Q. State your full name.

A. My name is Louis J. Weichman. Before the trial of the assassins I spelled my name Wie. I gave it distinctly to the reporters, as I thought, but they spelled it Wei, and since that I have spelled it that way.

Mr. PIERREPONT. It is not of the slightest consequence whether the i gets before the e or after.

Q. Where do you reside?

A. I reside at Philadelphia now.

Q. Do you know the prisoner at the bar?

A. I do, very well.

Q. State to the jury the first time you ever saw him.

A. I first met John Harrison Surratt, the prisoner at the bar, at St. Mary's College, near Ellicott's Mills, Howard county, Maryland, in September, 1859.

Q. I will pass over the intermediate time and come down to 1863. Where were you then living?

A. In the latter part of 1862 I accepted a position as teacher in St. Matthew's Institute, on Nineteenth street, between G and H.

Q. How long did you continue as teacher in that institute?

A. I taught in that institute for over a year—a year and ten days.

Q. Did you see Surratt in that year—1863?

A. In the month of January, 1863, I for the first time met Surratt since we left college.

Q. Where did you meet him?

A. I met him at St. Matthew's Institute, where he paid me a visit.

Q. Did he visit you there more than once?

A. He visited me there frequently during the years 1863-'64.

Q. Did you return his visits?

A. I visited his house at Surrattsville in March, 1863, and there made the acquaintance of his mother, Mrs. Mary E. Surratt, and his sister Anna.

Q. Who presented you to Mrs. Surratt?

A. Her son John.

Q. How far was that house from this house?

A. About ten miles from the Navy Yard bridge.

Q. In what direction from this house?

A. I believe it is a southeasterly direction.

Q. What was the place you visited?

A. The place was called Surrattsville.

Q. Was there a village there, or only a tavern?

A. The place was called Surrattsville after Surratt's father. It was a house of about ten rooms, and a post office there.

Q. Was it a tavern?

A. Yes, sir. There was a sort of a bar attached to the post office.

Q. They took lodgers—entertained travellers—did they?

A. Yes, sir.

Q. Was the father then living?

A. No, sir; the father died in 1862, I believe.

Q. When did you next visit at Surratt's house?

A. I visited there two or three times in 1863 and 1864. I wish to state here that during my first visit to Mrs. Surratt in 1863, in March, we were aroused one night by a very delightful serenade by the Marine band, which had gone down from the city here.

Mr. BRADLEY. That is not evidence.

WITNESS. I intend to make it evidence. I intended to state that there I met David E. Herold.

Mr. PIERREPONT. You need not state about the Marine band.

WITNESS. Very well. That band returned in the morning, and David E. Herold, who was with the band, was introduced to me by John H. Surratt.

Q Was he the same Herold who was tried as one of the conspirators?

A. The same.

Q. At that time, in March, 1863, did you meet another one of the conspirators?

A. No, sir.

Q. When did you next see John Surratt?

A. O, I saw John Surratt very frequently.

Q. Did he call to see you?

A. Yes, sir; he visited me from time to time in '63 and '64, and was always treated with the greatest kindness.

Q. Will you state when Mrs. Surratt came to the city to live?

A. Mrs. Surratt moved to her house in the city, No. 541 H street, between Sixth and Seventh, on the 1st of November, 1864.

Q. When did you first visit the house after she first moved there on the 1st of November, 1864?

A. I commenced boarding there the 1st of November, 1864; or I should say I took lodgings there. I did not take my meals there till the 1st of December.

Q Where did you have your washing done?

A. I had it done in the latter part of my stay at Mrs. Surratt's house by a colored woman at Mrs. Surratt's house.

Q. Who was the colored woman?

A. Her name was Susan Jackson. She did my washing for about f ur months before I left.

Q. Where did you have it done before the last four months?

A. I do not know exactly where the colored woman who did my washing lived, and I do not know her name.

Q. You had it done out of the house?

A. Yes, sir; during the months of November and December it was done out of the house, and during the months of January, February, March, and April it was done in the house.

Q. What was the name of the last person in the house who did it?

A. Susan Jackson.

Q. She was the last one?

A. Yes, sir.

(This examination objected to by Mr. Bradley as having been already gone over. Objection sustained by the court as a waste of time.)

Q. Now, will you state, between the time you first went there to board and the assassination of Mr. Lincoln, whether you boarded at any other house?

A. No, sir.

Q. Were you there on the night of the assassination?

A. I was.

Q. You boarded there all of the time from the 1st of December until the assassination?

A. Yes, sir.

Q. Will you tell the jury when and who you first saw at the house connected with this conspiracy, after you went there to board, excepting John H. Surratt and Mrs. Surratt, his mother?

A. The first one I saw at Mrs. Surratt's connected with the conspiracy was John Wilkes Booth.

Q. Tell the jury when you first saw John Wilkes Booth at the house.

WITNESS. Do you wish me to state when I first made Booth's acquaintance?

Mr. PIERREPONT. I wish you to state just now when you first saw him at the house.

A. I first saw him at the house in the latter part of December, 1864, or in the early part of January, 1865.

Q. That is the first time you saw him there?

A. Yes, sir.

Q. Now state where you first made his acquaintance.

A. In the winter of 1864–'65, I was invited one evening by Surratt to take a walk with him down the street. We left the house and walked towards Seventh street, and went down Seventh street. Just as we were opposite Odd Fellows' Hall somebody called, "Surratt, Surratt." I said, "John, there is some one calling you." He turned, and as he turned, recognized Dr. Samuel Mudd, an acquaintance of his, from Charles county, Maryland. He shook hands with the doctor, and then introduced him to me. Dr. Mudd then introduced his companion, as Booth, to both of us. After the etiquette of the second on such occasions, Booth invited both of us to his room at the National Hotel. Arriving at the room, Booth requested us to be seated, rang the bell, and had the servant bring drinks and segars to the room for the four gentlemen assembled. I made some remark about the appearance of the room; Booth said yes; it was a room that had been occupied by a member of Congress.

Q. Do you know the number?

A. The number of the room at that interview was 84. Booth took down some congressional documents from the secretary, and remarked what a nice read he would have to himself when left alone.

Q. Was Dr. Mudd still there?

A. Yes, sir. After a little conversation Dr. Mudd rose, went out into the entry that led by the room, and called out Booth. They did not take their hats with them; they did not go down stairs, because if they had done so I should have heard the noise of their footsteps. After five or six minutes they returned to the room, and John Surratt was called out. The three then remained in the entry for several minutes, and came back again. Dr. Mudd then came over to me where I was sitting and remarked: "Weichman," said he, "I hope you will excuse the privacy of the conversation; the fact is, Mr. Booth has some business with me; he wishes to purchase my farm in the country, but he does not want to give me enough." Booth also came to me and made an apology to the same effect, saying he did intend to purchase lands in the lower part of Maryland, and that he wanted to buy Dr. Mudd's farm. I was then seated on a sofa near the window. Booth, Dr. Mudd, and Surratt then seated themselves round a centre table in the middle of the room, about eight feet from me. They then

began a private conversation, audible merely as to sound. Booth took out from his pocket an envelope, and made marks on the back of it, and Surratt and Mudd were looking intently at him. From the motion of the pencil I concluded that the marks were more like roads or straight lines than anything else. After about twenty minutes' conversation around the table, they rose, and Dr. Mudd then invited us around to the Pennsylvania Hotel, where he was stopping. Arriving at the Pennsylvania Hotel, I sat down on a settee and talked with Dr. Mudd. Booth and Surratt seated themselves around the hearth, and talked very lively there, Booth showing him letters, and Surratt evincing a great deal of glee. About half past ten Booth got up and bade us good night. We left a short time after, Dr. Mudd stating that he was going to leave town next morning. On going home, John Surratt remarked that that brilliant, accomplished young gentleman, to whom I had been introduced, was no less than J. Wilkes Booth, the actor. When I first met Booth on Seventh street, I did not know that he was an actor at all. I had seen him several times on the stage, but I did not know that he was J. Wilkes Booth, the actor. I knew when he told me so. He said that Booth wanted to purchase Dr. Mudd's farm, and that he, Surratt, was to be the agent for the purchase of that farm Some weeks afterwards, when I asked Mrs. Surratt what John had to do with Dr. Mudd's farm, and whether he had made himself an agent of Booth, she said, "O, Dr. Mudd and the people of Charles are getting tired of Booth, and they are pushing him off on John."

Q. Up to the time of this interview, had you met Herold except down in the country?

A. Yes, sir; I met him the second time at Piscataway church, in the summer of 1864.

Q. Where is Piscataway church?

A. In Prince George's county, about five miles from Surrattsville.

Q. Who was with you?

A. John Surratt. I met Herold there for the second time.

Q. Did anything then occur?

A. No, sir; merely a casual meeting at the church, nothing more.

Q. Where did you and John Surratt go after this meeting with Dr. Mudd and Booth?

A. We went home.

Q. About what time did you get home?

A. We got home in the evening about 11 o'clock.

Q. Did anything further occur that afternoon?

A. No, sir.

Q. We will now come down to 1865. Did you know of Surratt being in any business?

A. Yes, sir; in the latter part of December, 1864, and the early part of January, 1865, he was employed by Adams Express Company in this city.

Q. How long was he there?

A. To the best of my knowledge he was there about ten days.

Q. Did he tell you anything about how long?

A. I believe he did; ten days or two weeks.

Q. Did he leave?

A. Shortly after Booth's introduction to him, he was very anxious to get two weeks' leave of absence to go into the country. There being at that time a great press of business in sending off soldiers' boxes, &c., they refused to give him that leave. He told me that he took French leave.

Q. In January, 1865, did you know where he went?

A. Well, he did take French leave, and was away from the house several days. When he returned I asked him where he had been. His answer was, to Port Tobacco.

Q. Do you know how he went away at that time?
A. He told me he went on horseback.
Q. Do you know how he returned?
A. I do not know exactly.
Q. Did he say anything to you about having met Mr. Martin, or anybody else, at Port Tobacco at that time?
A. No, sir.
Q. Did he speak of meeting any one from New York there?
A. No, sir.
Q. Do you know what horse he rode?
A. No, sir.
Q. Look at the book now shown you, (book exhibited,) and tell the jury what book it is.
A. This is the register of the Maltby House, Baltimore, Maryland.
Q. Please look under the date of that register of January 21, 1865, and state what you find there.
A. I find my own name and the name of J. Harrison Surratt registered there on the twenty-first of January, 1865, as occupying a room No. 127.
Q. The same room?
A. Yes, sir.
Q. Whose name is first entered?
A. My name.
Q. In whose handwriting is it?
A. In my handwriting.
Q. Whose name is next entered?
A. Surratt's.
Q. Is it in his handwriting?
A. It is.
Q. Will you state whether or not those names were actually entered on that day by you and Surratt?
A. They were.
Q. Did you occupy room No. 127?
A. We did.
Q. What time in the day did you reach Baltimore?
A. On the evening of the 21st of January. It was a Saturday evening.
Q. At this time did you know Payne?
A. No, sir; I had never met him.
Q. Nor Wood, as he was afterwards called?
A. No, sir.
Q. Will you state what occurred while you were there? Give it in its order of time. First I will ask you if you know, of your own knowledge, whether Payne was boarding in Baltimore then?
A. No, sir; I do not know, of my own knowledge.
Q. Now proceed to state what occurred while you were there.
A. On the morning of the 22d Surratt took a carriage and said that he had $300 in his possession, and that he was going to see some gentlemen on private business, and that he did not want me along.
Q. State whether from the time you first knew Surratt until this date he had been engaged in any business, except during the brief period he was at Adams's express office.
A. No, sir.
Q. What did he do when he went out on this private business, as he states?
A. That I do not know. He took the carriage and rode off. I told him I did not care about what gentlemen he was going to see; that I had business of my own to transact.
Q. How long was he gone?

A. He was at the hotel to dinner at 3 o'clock.

Q. You do not know, of your own knowledge, to whose house he went?

A. No, sir.

Q. Did Surratt name to you then, or at any subsequent time, the name of the person who kept the house where he went?

A. No, sir.

Q. When he came back, which you say was at 3 o'clock, what occurred?

A. I returned home that evening; whether he returned with me or not I do not know, but it is my impression that he did not. I think I left him in Baltimore.

Q. You returned that evening?

A. Yes, sir.

Q. At Mrs. Surratt's house, at this time, where was your room in the house in relation to Surratt's room?

A. Well, Surratt and I were so friendly and so intimate with one another that we occupied the same room.

Q. How about the bed?

A. We occupied the same bed.

Q. Did you ever see Atzerodt?

A. Yes, sir; I met Atzerodt about four weeks after Surratt's first introduction to Booth, and about a week or ten days after Surratt returned from the country, in the early part of January, 1865.

Q. From Port Tobacco?

A. Yes, sir.

Q. How long after he returned from Port Tobacco?

A. About a week or ten days, in the latter part of January.

Q. Where did you meet Atzerodt?

A. In Mrs. Surratt's parlor; he was introduced to me by John Surratt.

Q. How is that name pronounced?

A. I call it Atzero.

Q. How was it called in the house?

A. Surratt called it Atzerodt; the young ladies, they did not understand his name, and knowing that he came from Port Tobacco, they called him "Port Tobacco." He was a very witty sort of a fellow, and I supposed they named him so on purpose.

Q. Then he was sometimes called Atzerodt?

A. He was always called "Port Tobacco" in the house, except by Mrs. Surratt when she spoke to him personally.

Q. What time in the day was it you first saw him in Mrs. Surratt's parlor?

A. It was after 4 o'clock, on my return from work.

Q. What did Surratt say when he presented him?

A. He merely said, "Mr. Weichmann, let me introduce to you Mr. Atzerodt." That is all. Atzerodt was a very funny sort of a fellow.

Q. Did you talk with him?

A. I do not remember anything that he said.

Q. Was there anything more said by Surratt at that time that you remember?

A. No, sir.

Q. Did Atzerodt say anything except the ordinary courtesy of the introduction?

A. No, sir.

Q. What did Atzerodt do then?

A. I do not know; he visited Surratt very frequently.

Q. How long did he stay there this time?

A. He staid there perhaps an hour, or a little longer.

Q. State whether he and Surratt on this occasion went out together.

A. That I cannot now remember.

Q. Did they converse together?

A. O, yes, sir.
Q. Where?
A. In the parlor.
Q. Did Mrs. Surratt converse with either of them?
A. Yes, sir; Miss Anna Surratt also, and Miss Fitzpatrick.
Mr. PIERREPONT. I am speaking of Mrs. Mary E. Surratt.
A. Yes, sir.
Q. What part of the parlor did Surratt and Atzerodt talk in?
A. I really cannot remember that.
Q. Was there anything particular said on this occasion?
A. No, sir; nothing at all that I remember.
Q. How long did he stay?
A. He may have remained in the house an hour.
Q. Did he go into any other room than the parlor?
A. Not that I remember.
Q. Do you know with whom he went away?
A. I do not know whether he left the house with Surratt on that particular occasion or not.
Mr. BRADLEY. Then answer the question.
Mr. PIERREPONT. You say you do not know?
A. Yes, sir.
Q. What other man did you see in the house that night? If not any, say so.
A. None at all except Mr. Holahan; he was a boarder at Mrs. Surratt's.
Q. When did you next see Atzerodt at the house?
A. O, I saw him very frequently there between the time of his first coming there and up to the time of the assassination; perhaps he visited there altogether twenty times.
Q. He was there, then, very often?
A. O, yes, sir; very often indeed.
Q. That is, you saw him there very often?
A. Yes, sir.
Q. Will you state during what hours of the day your occupations kept you from the house?
A. From nine until half past four.
Q. At what hours in the day or at night were you in the habit of seeing Atzerodt there so frequently?
A. I generally met him in the parlor on my return from work between four and five or five and six o'clock.
Q. What was he doing there?
A. Nothing in particular that I know of, except talking with Surratt.
Q. Did Booth also come there?
A. Booth came there very frequently.
Q. Do you remember of Surratt going anywhere in February of that year?
A. Yes, sir; he went to New York in the early part of February.
Q. Did he tell you what he went for? and if so, what?
A. He did not state what he went for, but he did state whom he saw there.
Q. Who was that?
A. John Wilkes Booth.
Q. What more did he tell you about that visit to New York when he saw John Wilkes Booth?
A. Nothing, except saying that Booth had a very fine parlor, and that he had been introduced to Edwin Booth.
Q. In New York?
A. Yes, sir.
Q. When did you first see Payne?
A. I met Payne at Mrs. Surratt's house in the latter part of February, 1865

for the first time. I was seated in Mrs. Surratt's parlor one evening when I heard the door-bell ring. I went to the door. On opening it I saw standing there a man, tall, with very black hair, very black eyes, and ruddy countenance. He asked me if Mr. Surratt was at home. I said he was not. Then he asked me if Mrs. Surratt was at home. I said she was. He then expressed a desire to see Mrs. Surratt. I inquired his name, and he said Mr. Wood. I went into the parlor and told Mrs. Surratt that a gentleman by the name of Mr. Wood was at the door who wished to see her. She requested me to introduce him. I did introduce him to Mrs. Surratt and the rest in the parlor as Mr. Wood. I had never met him before this, and I did not introduce him to Mrs. Surratt of my own accord. I never saw the man before.

Q. What did Mrs. Surratt do?

A. Payne approached Mrs. Surratt and talked to her. I do not know what he said. She came to me in a few moments and said "that this gentleman would like to have some supper, and as the dining-room below was disarranged, she would be very much obliged to me if I would take supper up to him in my own room." I said "yes," and I did take supper on a waiter to him in my own room.

Q. At this time did Mrs. Surratt appear to know him?

Mr. BRADLEY. He has told us all he knows about it.

Mr. PIERREPONT. Was there any sign of recognition?

A No, sir; not that I could see.

Q. And you introduced him?

A. Yes, sir.

Q. What occurred after the supper was carried up to your room?

A. I sat down there while he was eating supper and made some inquiries of him, asking him where he was from, &c. He said he was from Baltimore.

Q. In what story was this room of yours where he had this supper?

A. It was in the third story.

Q. Front or rear?

A. Third story, back room.

Q. What furniture was there in the room?

A. There was a bed there.

Q. The bed on which you and Surratt slept?

A. Yes, sir—a table, a looking-glass, and three trunks.

Q. It was a bed-room?

A. Yes, sir.

Q. Will you here describe that house? Describe how the parlor story is entered, and how the basement is entered.

A. It is a house containing ten rooms. The two rooms on the first story were respectively the dining-room and the kitchen.

Q. How did you enter them?

A. The dining-room was entered from the street There is a passage that leads right along by the dining-room, and that is entered from the street.

Q. What is the passage you speak of, an alley way?

A. No, sir; a passage in the house—a hall.

Q. Is there an alley-way on the lot?

A. There is an alley-way on the side of the house towards Sixth street.

Mr. PIERREPONT. I mean that. Is it on the east side?

A. Yes, sir.

Q. How do you enter the parlor story?

A. The parlor story is entered by a very high flight of stairs.

Q. Where are the stairs?

A. Outside on the street. The parlor fronts the street, and Mrs. Surratt's room was directly back of the parlor. She occupied the back room on the second story. There are two rooms in the second, and three in the third story.

Q. Your room, to which you took the supper, was a bed-room in the third story back?

A. Yes, sir.

Q. Tell what occurred while Payne was eating his supper there.

A. I asked him where he was from. He said Baltimore. "Any business there?" said I. He said: "I am a clerk in the china store of Mr. Parr."

Q. What more?

A. That was about all. He ate his supper and then said he would like to retire. He did retire.

Q. To what room?

A. He slept in the attic. He did not then, nor did he ever, sleep in my room.

Q. Did you see him the next morning?

A. No, sir. When I arose he was gone.

Q. When did you next see Payne at the house?

A. I saw Payne the next time on the evening of the 13th of March, 1865. As luck would have it, I was again sitting in the parlor when the bell rang. I again went to the door. I met the same man whom I had met three weeks before. His former visit, however, had produced so little impression on me that I had forgotten him. I asked him his name. He said: "My name is Mr. Payne." He again asked for Mr. Surratt, but Mr. Surratt was not at home that evening. I took him into the parlor, where were Mrs. Surratt and the ladies, and said: "This is Mr. Payne." They all recognized him and sat down and commenced conversation. In the course of the conversation one of the young ladies called him Mr. Wood, and then I recollected that on the previous occasion he had given the name of Wood. On this occasion he was no longer a clerk in a china store, but he represented himself as a Baptist preacher. He wore a suit of gray clothes, and a black neck-tie. His baggage consisted of two linen shirts and a linen coat. The following day—I believe it was the afternoon—Surratt had returned. He was lying on the bed at the time.

Mr. BRADLEY. Who was?

A. Surratt. I was sitting at my table writing. Payne walks in, looks at Surratt, and says: "Is this Mr. Surratt?"

Q. You were in your room, up stairs?

A. Yes, sir. I said, "It is." He then looked at me, and immediately observed, "I would like to talk privately to Mr. Surratt." I then got up and went out of the room, as any gentleman would have done. The following day, the 15th March, on returning to my room from my work, I found a false moustache on my table. Not thinking much about it, I threw it into a toilet box that was there. From the appearance of things around my room, I knew John Surratt was at home. I then went up into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie-knives, and revolvers. They instantly threw out their hands as if they would like to conceal them. When they saw it was me they regained their equanimity.

Q. Where did those things lie?

A. They were on the bed.

Q. State what those things were.

A. Eight spurs—bran new spurs—and two revolvers.

Q. How were they as to being new?

A. I do not now remember whether the revolvers were new or not. There were two revolvers, however, and two bowie-knives. When I went down to dinner, I walked into the parlor and told Mrs. Surratt that I had seen John and Payne fencing with those things here, and added: "Mrs. Surratt, I do not like this."

Q. Did you tell her what you did not like?

A. Yes, sir; about Surratt being seen with bowie-knives.

Q. Did you tell her what you had seen?

A. Yes, sir. I told her I had seen them on the bed playing with those toys. She told me that I should not think anything of it; that I knew John was in the habit of riding into the country, and that he had to have these things as a means of protection. We went down to dinner. The same evening Surratt showed me a $10 ticket for a private box at the theatre. I wrested the ticket from him, and told him I was going to the theatre. "No," said he, "you are not. I don't want you to go to the theatre this evening, for private reasons." He then struck me in the pit of the stomach, and took the ticket away from me again. He was very anxious that evening to take the smallest ladies in the house.

Q. Did he take any?

A. He asked Miss Dean to go, and she consented.

Q. State who Miss Dean was.

A. Miss Dean was a little girl in the house about eleven years of age. He requested Miss Holahan, daughter of the Mr. Holahan to whom I have referred, to go, but as Miss Holahan was then preparing for her first communion in our church, she refused.

Q. How old was she?

A. Miss Holahan, I suppose, was about thirteen years of age. I did not ask their ages, and therefore do not know them positively, but from appearances such was my judgment. He next asked Miss Fitzpatrick to go, and she consented.

Q. About how old was Miss Fitzpatrick at that time?

A. She was seventeen at least, I should think. Those who went to the theatre were Miss Dean, Miss Fitzpatrick, Payne, and Surratt. Before they left Surratt came and borrowed a blue military cloak that I had at that time, and said that he wanted Payne to wear it.

Q. How long was this before the assassination?

A. Just about four weeks. It was on the 15th of March.

Q. To what theatre did they go?

A. To Ford's theatre. That night, about eleven o'clock, as I was lying in my bed—I had retired—Surratt and Payne came into the room. Surratt took a pack of playing cards which were on the mantle of my room, when they both left, and remained out all night. A few days afterwards, in conversation with a young man named Brophy——

Mr. BRADLEY. Was Surratt present?

A. Yes, sir. In this conversation with this young man, Surratt stated that he had spent the other night, meaning the 15th of March, with a party of sociables at Gautier's saloon, and that he would like to introduce us, but it was a private club, or something to that effect.

Q. When was it you saw Surratt and Payne again, after they left that night, at eleven o'clock?

A. The next day, on returning from my office.

Q. That was the 16th of March?

A. Yes, sir.

Q. You did not see them in the morning?

A. O, yes; they came in the morning about seven o'clock.

Q. Came to the house?

A. Yes, sir.

Q. State what then occurred.

A. They simply came; nothing occurred other than their entrance.

Q. What time did you go to your office that day?

A. I had to be at the office at nine o'clock, and I generally left the house at a quarter past or half past eight.

The court here took a recess for half an hour.

AFTERNOON SESSION.

LOUIS J. WEICHMAN. Examination resumed.

By Mr. PIERREPONT:

Q. I had passed to the 15th and 16th of March in my last inquiry. I now pass back to the 3d of March. Can you tell what occurred on the 3d of March, 1865; whether you saw Surratt and Booth?

A. Yes, sir.

Q. Where?

A. I went down the street with Surratt in the evening of that day. At that time there was a good deal of serenading around town on account of the proposed inauguration of the President on the following day. After awhile Surratt left me, and I went to hear the music.

Q. Whom did you first go out with?

A. John Surratt.

Q. Was there anybody else with you when you first went out?

A. No, sir.

Q. Did anybody join you?

A. No, sir.

Q. You came back together?

A. No, sir; we did not come back together; Surratt left me.

Q. Where did he leave you?

A. On Pennsylvania avenue, near Eighth street.

Q. Then what occurred?

A. When I returned to the house of Mrs. Surratt I saw John Wilkes Booth and John H. Surratt in the parlor talking together.

Q. About what time did you return?

A. After 7.

Q. Then what occurred?

A. Then I proposed that we should walk up to the Capitol. Congress was at that time in session. Three of us did go—Surratt, Booth, and myself. When we were returning from the Capitol Surratt and I left Booth at the corner of Sixth street and Pennsylvania avenue.

Q. What did Surratt then do?

A. We went home.

Q. Did you see Booth again that night?

A. No, sir.

Q. After you and Surratt got home, what?

A. Nothing.

Q. Did you see Booth the next morning, the 4th March?

A. I saw him on the evening of the 4th, at Mrs. Surratt's. He was in the parlor then. I did not see him during the day.

Q. Was John Surratt at home that evening?

A. Yes, sir; he had been riding round town all day with the procession; he was on horseback.

Q. Did you see Herold that evening?

A. No, sir.

Q. Who else beside Booth and Surratt were at the house that evening?

A. No one that I know of, except those in the house.

Q. Up to this date had you seen Herold at the town house?

A. I met Herold at Mrs. Surratt's once.

Q. When was that?

A. In March, 1865.

Q. What time in the day?

A. After 4 o'clock. I generally saw these people there, and these events that I narrate, after 4 o'clock.

Q. Where was Herold then?

A. He was in my room talking with Atzerodt and John Surratt.

Q. He came there on horseback. Do you know how he went away?

A. He went away on horseback. He had left his horse in Mrs. Surratt's yard.

Q. When did you next see Herold at the house? Did you see him there between that time and the 16th of March, 1865?

A. I saw him only once at Mrs. Surratt's house.

Q. Do you know what the play was on this night that you speak of Payne and Surratt going to the theatre with these young girls?

A. Jane Shore.

Q. Do you know whether Booth played that night?

A. He did not.

Q. Do you know when he did play at Ford's theatre next after that?

A. He played on the evening of the 18th of March.

Q. What did Booth play in at Ford's theatre on the 18th?

A. He took the part of Pescara in the play of the Apostate.

Q. Who were there?

A. Surratt invited me to go to the theatre that evening with him. I at first refused, but finally consented. He showed me a pass for two, signed by J. Wilkes Booth. As we went down Seventh street, near the corner of Seventh street and Pennsylvania avenue, we met Atzerodt. He was also going to the theatre. At the theatre we met David E. Herold and Mr. John T. Holahan, a fellow-boarder at Mrs. Surratt's.

Q. Then at the theatre that night were Surratt, Herold, Atzerodt, and yourself, and Booth playing.

A. Yes, sir. Mr. Holahan was also there.

Q. And this you say was on the 18th?

A. Yes, sir.

Q. On the 19th did anything happen?

A. Nothing in particular that I remember.

Q. On the 20th?

A. Surratt was walking past the post office then. I met him as I was going home. He went to the post office and inquired for a letter addressed to him under the name of James Sturdy.

Q. He got such a letter did he?

A. He did.

Q. Did he show it to you?

A. He did.

Q. Do you know where it came from?

A. From New York.

Q. Do you know who wrote it?

A. The letter was signed "Wood." It was written in a very bad hand.

(Mr. Bradley objecting to any reference being made as to the signature of the letter or its contents, the witness was cautioned by the court not to speak of the contents of any paper unless it was produced and proved, nor to refer to anything said by any person other than some of the parties connected with this conspiracy.

Q. Will you tell us what Surratt said to you on getting this letter?

A. He did not say anything that I now remember of. He merely showed me the letter.

Q. Did he state who the man was, or anything about it?

A. Yes, sir; he stated it was "Wood," who had been at Mrs. Surratt's house.

Q. Did he tell you where this "Wood" was?

A. No, sir.

Q. Was there anything more that he told you on that subject that you remember?

A. No, sir.

Mr. PIERREPONT. Then I pass from that to the following day, the 21st. Did anything occur on that day?

A. Not that I remember.

Q. Did you see any of these parties on the 21st?

A. Not that I remember.

Q. Did you see Surratt?

A. If he was at home at the time I must have seen him.

Q. I ask what your memory is about seeing him?

A. I have no memory about it.

Q. How on the 23d of March?

A. On the 23d Mrs. Eliza Holahan, the wife of J. T. Holahan, who boarded at Mrs. Surratt's house, came to the office where I was employed and handed me a telegram from New York.

Q. Do you know where that telegram is?

A. The last that I saw of it, it was in the possession of the War Department.

Mr. BRADLEY. Say nothing about it then.

Q. State whether this is the telegram. (Handing witness a telegram from New York, dated March 23, 1865.)

A. Yes, sir; that is it.

The telegram was then read as follows:

'NEW YORK, *March* 23, 1865.

"Received, Washington, March —, 1865, —— o'clock.

"To ——— WICKMAN, Esq, 541 H street:

"Tell John to telegraph number and street at once.

"J. BOOTH."

Mr. BRADLEY. I object to the introduction of the evidence, because there is no sort of proof that J. Wilkes Booth wrote the telegram. This copy cannot be any evidence of that fact.

Mr. PIERREPONT. This is the one received.

The COURT. It cannot be any evidence, unless connected in some way.

Mr. PIERREPONT. It will be connected in a few seconds, sir.

Mr. BRADLEY. That is what I am waiting for.

Q. What did you do when you got this telegram?

A. There were two things about the telegram that struck my attention. My first name was omitted, and my last name was not spelt correctly. It was spelt "Wickman." I knew of no party in New York who could send me a telegram. I had no acquaintances there. I opened the envelope, and I saw it was from Booth. I did not know why he should address me a telegram. I showed it to several of the clerks in the office, and I took the telegram home that day and showed it to Surratt.

Q. What did he say?

A. I told him I thought it was intended for him. I asked him what number and street were meant. The telegram reads, "Telegraph number and street at once." He says, "Don't be so damned inquisitive." That same evening he asked me to walk down the street with him. We went as far as Tenth and F, when he met a Miss Anna Ward. He then walked back from Tenth and F street to Ninth and F streets with me, and went into the Herndon House and called for Mrs. Murray.

Q. You went in with him?

A. Yes, sir.

Q. When she came he desired to speak to her privately?

A. Mrs. Murray did not understand him. Then Surratt said, "Perhaps Miss Anna Ward has spoken to you about this room. Did she not speak to you about engaging a room for a delicate gentleman who was to have his meals sent up to his room, and that he wanted the room for the following Monday, which was the 27th of March, 1865?" Mrs. Murray recollected, and said that a room had been engaged. The name of the party for whom the room was engaged was not mentioned by myself, by Mrs. Murray, or by John Surratt.

Q. What more occurred in the Herndon House at that time?

A. Nothing more; we then left and returned home. After I got to my room he went out again.

Q. Did he say anything about this man who was delicate and who would want his meals in his room?

A. No, sir; he did not mention his name at all.

Q. Did he say anything about him further than you have mentioned?

A. I think he stated that he would come from New York; that, however, is merely an impression of mine.

Mr. BRADLEY. Let us have facts, not impressions.

Q. When you say your impression what do you mean? Do you mean your best recollection?

A. Not exactly a recollection, but a faint idea.

Mr. PIERREPONT. I do not desire anything that is not your recollection and your best recollection.

Q. What more was done?

A. Nothing more that evening that I remember.

Q. Did you get any other telegram?

A. No, sir.

Mr. PIERREPONT. We have here now the original telegram, a copy of which was introduced and read a few moments since.

Q. Is that (handing telegram to witness) Booth's handwriting?

A. It is.

Mr. BRADLEY. Before he gives an opinion let us ascertain what knowledge he has of Booth's handwriting?

The COURT. Let him state his opportunities for knowing whether it is his or not.

Mr. PIERREPONT. What opportunities have you had for knowing anything about Mr. Booth's handwriting?

A. I saw, previous to the receipt of this telegram, several cards at Mrs. Surratt's house with Booth's name on them.

Q. Written do you mean?

A. Yes, sir.

Q. Have you seen him write?

A. Yes, sir.

By Mr. BRADLEY:

Q. When did you see him write?

A. I saw him write between the time I made his acquaintance and the time of the assassination.

Q. When and where?

A. I cannot be so positive as to the time when, but I have seen him write between those two dates.

Q. Write what?

A. Well, he wrote his name on a card.

Q. Was it J. Booth?

A. J. W. Booth.

Q. Did you ever see him write his name J. Booth?

A. No, sir.

Q. And you mean to say that from having seen him write some other name, and that on cards, you are able to identify this?

A. I have seen him write his own name, and this corresponds exactly with what I saw him then write; I can tell it is his from the general character of his writing, and the manner in which he made his "B."

Q. Where did you ever see him write it?

A. At the National Hotel in this city.

Q. A letter, or what?

A. I have seen him write his name.

Q. But I am not asking you about his name because you saw him write J. W. Booth. What else did you see him write?

A. I saw him write a card once that he sent to Mrs. Surratt.

Q. Pencil or not?

A. He wrote with pencil.

Q. The extent, then, of your knowledge of his handwriting is that you once saw him write a card with pencil, and saw him write his name—how often?

A. I do not remember that.

Q. Did you ever see him write it except on that one card?

A. Yes, sir.

Q. Where?

A. He gave me his autograph once.

Q. Was that J. Booth?

A. No, not J. Booth; he put in the initial of his middle name.

Q. And from the knowledge of his handwriting thus gained you swear positively that this telegram is in his handwriting?

A. The writing corresponds exactly. There is the same "B."

Mr. BRADLEY. That will do; let it go in.

Mr. PIERREPONT. If there is any question about this being his handwriting we will prove it beyond a doubt.

Mr. BRADLEY. It will be time enough to talk about that when you offer the proof. Your honor will say whether that is evidence to go to the jury.

The COURT. Yes, sir; I am satisfied that that is evidence sufficient to let this go before the jury.

Mr. PIERREPONT. This was on the 23d of March, I think. Now, on the 24th of March did anything occur or not?

A. No, sir.

Q. Then I will come to the 25th of March, 1865. Did you see John Surratt on that day?

A. Yes, sir. As I went to breakfast, and looked out of the dining-room window, I saw John Surratt, his mother, and Mrs. Slater, who had been at the house previously, in a carriage containing four seats, to which were attached a pair of white horses.

Q. Do you know where the horses came from?

A. Yes, sir. Mrs. Surratt, the same evening, told me that the horses had been hired from Brooke Stabler.

Q. Did the three go away together?

A. Yes, sir.

Q. About what time in the day did the three leave?

A. About 8 o'clock in the morning.

Q. When did you next see Mrs. Surratt?

A. I saw her the same evening.

Q. Where?

A. In her house,

Q. How did she come back?

A. She returned alone.

Q. Did she return in the carriage, or in some other way?

A. In the Port Tobacco stage—the stage that runs from Bryantown, or Port Tobacco, to Washington, and delivers passengers at the Pennsylvania House.

Q. Did Mrs. Slater and John Surratt return with her?

A. No, sir.

Q. Did they come there that night at all?

A. No, sir.

Q. Did Mrs. Surratt tell you anything that occurred with them?

A. I asked her where John had gone. She said he had gone to Richmond with Mrs. Slater, to get a clerkship.

Q. Did you see those horses again?

A. I did.

Q. When?

A. I saw them the following Sunday.

Q. How long after; what day of the month was that?

A. That was the 26th day of March.

Q. The next day, then?

A. Yes, sir.

Q. Where did you see them; who had them?

A. I saw them in front of Mrs. Surratt's house. They were driven there by a Dr. Wyvil.

Q. Did Mrs. Surratt say anything to you about them?

A. On Saturday evening, as I was leaving the house, she requested me to go round to Brooke Stabler's, and say that the horses would not be returned until the following Sunday, the 26th of March. I made some objection. "O," says she, "Brooke considers John, Herold and Atzerodt a party of gamblers and sports, and I want him to think so."

Q. Did you tell Brooke Stabler?

A. I did.

Q. When the horses came back, what was done with them?

A. They were returned by this Dr. Wyvil to Brooks Stabler.

Q. Did Mrs. Surratt say anything to you about her son having gone to Richmond with Mrs. Slater, or about the horses?

A. No, sir.

Q. You remember nothing more?

A. No, sir.

Q. Do you remember anything more in this connection on this day?

A. On the morning of the 26th of March, as I was going to church, Mrs. Surratt came to me.

Q. The 26th was Sunday, was it?

A. Yes, sir. She came to me and asked me if I would not go to the National Hotel and request Mr. Booth to come and see her in the afternoon. As I went down Sixth street, between Pennsylvania avenue and C street, I met Atzerodt, who was also going to see Booth.

Q. You went together, did you?

A. Yes, sir. When we got to Booth's room, Booth introduced me to Mr. J. B. McCullough, the actor. After I communicated my message, I left and went to church.

Q. What did you tell him?

A. I told him that Mrs. Surratt wanted to see him on private business. That was Mrs. Surratt's message. Booth did come that afternoon. Just while these horses were in front of the house, Mrs. Surratt had an interview with him alone near the head of the kitchen stairs.

Q. Did you hear anything they said?
A. No, sir.
Q. Did you go to church with her that day?
A. I did.
Q. What occurred in going or coming from church?
A. Nothing that I remember.
Q. Did she stop at any house?
A. No, sir, not on the 26th of March.
Q. Did she at any time with you in coming or going from church?
A. There were two churches that she was in the habit of going to. One was St Aloysius church, at the other end of the town, near the depot, and the other was St. Patrick's church. On this Sunday, however, she went with me to St. Aloysius church. When she went to church with me on Sunday, she always went to St Aloysius church.
Q. Did you return from church with her?
A. Yes, sir.
Q. Did you stop anywhere?
A. No, sir; not in going from St. Aloysius church.
Q. In going from any church; I do not know the names of the churches here?
A. On Sundays she went to St. Aloysius. During Lent there were evening services at St. Patrick's during week-days, and she went there.
Q. Did you go with her to church at any time, and returning, stop anywhere? I do not remember the dates. You will give them.
A. Yes, sir. After the 27th, I do not remember the particular evening, Anna Surratt, Miss Jenkins, Miss Fitzpatrick, Mrs. Surratt, and I, had been to St. Patrick's church, on the corner of Tenth and F streets.
Q. What occurred in returning?
A. On returning she stopped at the Herndon House, at the corner of Ninth and F streets. She went into the Herndon House, and said that she was going in there to see Payne.
Q. Mrs. Surratt said that?
A. Yes. sir.
Q. Tell what occurred?
A. She did go, and she came out.
Q. How long was she in there?
A. Perhaps twenty minutes.
Q. Did you see her when she came out?
A. Yes, sir.
Q. Where were you waiting?
A. We walked down Ninth street to E—the party did—and down E to Tenth; and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House.
Q. Did she join you?
A. Yes, sir; and went home with us.
Q. To her house?
A. Yes, sir.
Q. Did she say anything to you?
A No, sir.
Q. Did you have any conversation with her that day on that subject in any way?
A. During that week I was one day going down Seventh street, and again near Seventh street and Pennsylvania avenue, I met Atzerodt. I asked Atzerodt where he was going. He replied, to see Payne. Then I inquired, "Is it Payne who

is stopping at the Herndon House?" His answer was, "Yes." I had always been curious to know who that man was who was stopping there.

Q. Did Mrs. Surratt tell you who it was?

A. When I mentioned to her, after reaching home, that the man Payne who had been boarding at her house was at the Herndon House, she wanted to know how I knew it. I just told her, as I have stated here.

Q. What did you tell her?

A. That Atzerodt told me. She appeared angry that Atzerodt should have said so to me.

Q. State in what way she indicated her anger.

A. Merely by her countenance—her expression.

Mr. PIERREPONT. I come down now to the month of April, in which the assassination happened. Do you know where Mrs. Surratt was on the 1st of April?

A. In the morning, when I left the house, she was sitting at the breakfast table, and when I returned in the evening she was not at home.

Q. When did you next see her?

A. She came home a short time afterwards in a buggy driven by her brother, Mr. Jenkins. She said that she had been to Surrattsville.

Q. Did she say anything more?

A. No, sir.

Q. On that 1st of April, or the evening of that day, did you see either of these parties at the house?

A. No, sir.

Q. On the the 4th and 5th, did you?

A. I saw Atzerodt at Mrs. Surratt's house on the 2d of April. She had again sent me, on the morning of the 2d of April, to the National Hotel to see Booth; and if he was not there, to go and see Atzerodt, and tell either of them that she wanted to see him that morning.

Q. Did you go?

A. I went to the National Hotel, but Booth was not there.

Q. Did you find Atzerodt?

A. I then went to the Pennsylvania House, and right in front of the Pennsylvania House I saw Atzerodt standing and holding by the bridle two horses; one was a very small one, and the other a very large horse, blind of one eye. Said I to him, "Whose horses are those?" He replied, "One is mine and the other is Booth's." I then communicated my message to him, and he requested me to get on one of the horses and ride back with him. I refused, stating that I wished to go to church. He then said he would go to church with me. Then I mounted the horse, and Atzerodt and I rode to Mrs. Surratt's house. Atzerodt got off and went in to Mrs. Surratt's, and I remained outside part of the time, taking care of the horses. That same afternoon Mrs. Surratt said to me that Mr. Jenkins, her brother, would like to return to the country, and that she would be much obliged to me if I would go to the Pennsylvania House and see Atzerodt, and say to him that he would oblige her very much by letting Mr. Jenkins have one of John's horses—meaning her son's horses. I went down to the Pennsylvania House that afternoon with Mr. Jenkins, and I did ask Atzerodt for one of these horses for Mr. Jenkins, stating to him my message as I had received it. His reply was that before he could loan Mr. Jenkins one of the horses he would have to see Mr. Payne about it. I then said to him: "What has Payne to do with the horses? You have said that one is yours, that another is Booth's, and Mrs. Surratt says that the horses are John's." John Surratt himself had told me that they were his, and had shown me at one time a receipt for the livery of the same two horses, the bill amounting to $30.

Q. What did he reply?

A. His answer was that Payne had a heap to do with them. Mr. Jenkins,

Atzerodt, and myself then walked up to the corner of Ninth and F streets, and Atzerodt requested us to remain outside and he would go in and see about the horses.

Q. What house was that?

A. The Herndon House. He told us to remain outside on the pavement. Mr. Jenkins and I remained on the pavement for about twenty minutes. Atzerodt came out, and he told us that Mr. Payne would not consent to the loan of those horses. I returned to Mrs. Surratt's house and told her what Atzerodt had said. She said she thought it was very unkind of Mr. Atzerodt; that she had been his friend, and had loaned him the last five dollars out of her pocket.

Q. What more occurred?

A. Nothing more on that day.

Q. You didn't get the horse?

A. No, sir; Mr. Jenkins walked home the next morning, I believe.

Q. This was the 2d?

A. Yes, sir.

Q. Now on the 3d, what occurred?

A. On the 3d of April, after the excitement and noise of the day, I was seated in Mrs. Surratt's parlor in the evening, on the sofa, when, about half past six o'clock, John Surratt walked into the room. He was very neatly dressed. He had on a new pair of pants. I asked him where he had been. His answer was to Richmond. I then said, "Richmond is evacuated. Did you not hear the news?" "No, it is not," he said; "I saw Benjamin and Davis in Richmond, and they told me it would not be evacuated."

Q. Was Mrs. Surratt in the room at this time?

A. Yes, sir.

Q. What did she say?

A. She merely bade him good evening.

Q. How long did he stay there?

A. He went up into my room and put on some clean clothes.

Q. Did he go with you?

A. No, sir; he went up before me. I went up a few minutes afterwards; I think he called me up stairs.

Q. When you got to the room with him, what did he say?

A. He did not say very much. He said that he wanted to exchange forty dollars in gold. He did exchange this forty dollars in gold for forty dollars in greenbacks He showed me in the room nine or eleven twenty-dollar gold pieces, and fifty dollars in greenbacks.

Mr. BRADLEY. Before he made the exchange?

A. He made the exchange after he showed me the gold. He showed me the gold and the greenbacks at the same time.

Q. Did he say anything as to where he had got the money?

A. I did not ask him where he got it. I expressed a sort of surprise. He said that he had an account in the Bank of Washington, but he did not say that he had gotten this money from the Bank of Washington.

Q. Did he say anything when you expressed your surprise?

A. No. sir.

Q. Did you see any other money that he had?

A No, sir; not that evening.

Q. Any other evening?

A. No, sir.

Q. That was all the money you saw him have at that time?

A. I had seen him before. He always appeared to have plenty of money in his pockets—five dollars and ten dollars. He seemed to be always well supplied.

Q. Had you seen him with any quantity of money, except on the occasion of which you have just spoken?

A. No, sir.

Q. Did he tell you where he got this, or any of it?

A. No, sir.

Q. What time in the evening of the 3d of April, did he leave the room?

A. He left there about 7 o'clock.

Q. What did he say?

A. Between half past six and half past seven he asked me to go down the street with him and take some oysters. He was dressed in gray clothes, with a shawl thrown over his shoulders. He told me that same evening that he was going to Montreal. We got the oysters near Four-and-a-half street and Pennsylvania avenue.

Q. Did he tell you the day he left Richmond?

A. No, sir.

Q. After eating the oysters, what occurred?

A. We walked back as far as the Metropolitan Hotel, and there he bade me good night. He said he would correspond with me when he got to Montreal. I have not met him since, except to-day.

Q. On the 5th of April, what occurred? Did you observe Booth or Herold?

A. Booth was at the house between the 3d and the 10th of April, on one or two occasions. I remember on one of those occasions a letter was received.

Q. What time in the evening was this the case?

A. About 7 or 8 o'clock.

Q. In the parlor?

A. Yes, sir. I walked into the parlor. Booth was sitting on the sofa. Mrs. Surratt was in the room, and a young lady; and Miss Anna Surratt was directly opposite Booth. I sat down at the other end of the same sofa on which Booth was sitting. After conversing for a while around the room, Booth got up and said, "Miss Ward, will you please let me see the address of that lady?" Miss Ward advanced to meet him in the centre of the room, and handed him a letter. After Booth and Miss Ward had gone out, Anna Surratt got up and said, "Mr. Weichmann, here is a letter from brother John," and read the letter. No lady's name was mentioned in it.

Mr. PIERREPONT. We cannot give the contents until we produce the letter.

Mr. BRADLEY. If he can repeat it, I have no sort of objection.

Mr. PIERREPONT. I do not want him to repeat it, until the letter is in court.

Mr. BRADLEY. What became of that letter?

WITNESS. I do not know, sir; I have not seen it since.

Mr. PIERREPONT. Well, go on.

WITNESS On another occasion, when Booth was in the parlor, I commenced to jest him about the fall of Richmond. He said that the confederacy was not gone up yet, and showed me one of the Perrine war maps.

Q. Was this the same evening on which you had seen the letter?

A. No, sir. It was on another evening.

Q. What are those maps of which you speak?

A. They are a sort of war maps—maps of the southern section of the country. He showed me the different routes that Lee and Johnston were going to take. Nothing more than that.

Q. On the 6th of April, what occurred?

A. Nothing that I remember of now.

Q. Did Mrs. Surratt go into the country on the 6th?

A. Not that I remember.

Q. Do you remember anything as to whether Atzerodt, between the first and the tenth, used to come there as well as Booth?

A. I did not see Atzerodt at Mrs. Surratt's house after Sunday, the 2d of April.

Q. Did you see Herold there?

A. I did not see Herold at Mrs. Surratt's house after March, 1865.

Q. We now come to the 11th, just before the assassination. What occurred on that day, as you remember?

A. On the evening of the 10th Mrs. Surratt asked me if I would not be kind enough to drive her into the country on the morning of the 11th of April. I consented.

Q. What day of the week was that?

A. That was Tuesday.

Q. Did you go with her?

A. Yes, sir, the following morning.

Q. What time did you leave?

A. She said to me, "Mr. Weichmann, won't you go round to the National Hotel and tell Mr. Booth that I sent you for his horse and buggy, and desire to know whether I can have it." I did go to the National Hotel, and found Booth in his room. I communicated my message just as Mrs. Surratt had told me. He said, "I have sold the horse and buggy, but here are ten dollars; go you and hire one." In speaking about the horses, I said to him, "I thought they were John Surratt's horses." "No," says he, "they are my horses." I left the hotel, and went to Howard's stable and hired a horse and buggy. I then went to Mrs. Surratt's house. We left the house about half past nine o'clock. As we were on our way down to Surrattsville, we met Mr. John M. Lloyd.

Q. Where did you meet him?

A. I met him just outside of a little village there. The name of the village I have since understood to be Uniontown.

Q. Did you stop?

A. Yes, sir; and she told Mr. Lloyd to stop too. Mr. Lloyd got out of his carriage, and came and spoke to her. She leaned her head out of the window and talked to him. I do not know anything of the conversation that passed between them.

Q. Why did you not hear it?

A. In the first place, I never make a habit of listening to people; and in the second place, the conversation was not loud enough for me to hear.

Q. How long did he stop there?

A. Several minutes.

Q. You may state whether this is the Lloyd who kept the tavern?

A. Yes, sir. He had rented Mrs. Surratt's house at Surrattsville.

Q. Will you state in what tone of voice this conversation between Mr. Lloyd and Mrs Surratt was carried on?

A. It was in that kind of a tone that I did not hear.

Q. You can tell whether it was of an apparent confidential tone in lowness, or whether it was loud and free?

A. It seemed to me to be in a confidential tone.

Q. You did not hear the words?

A. No, sir. If I had heard them, I would have no hesitation in saying so.

Mr. PIERREPONT. You did not hear them, and therefore, of course, you cannot tell what they were.

Mr. BRADLEY. We want what the witness recollects; not any feelings, or impressions.

WITNESS. Mrs. Surratt, after this, had a conversation in a louder tone with Mrs. Offutt, who was sitting in the carriage.

Q. Was Lloyd driving?

A. Yes, sir; he had been driving.

Q. Did you hear what she said to Mrs. Offutt?

A. Yes, sir.

Q. What was it?

A. She was speaking of a man by the name of Howell, who had been arrested on the 24th of March and thrown into the Old Capitol prison, as a blockade runner.

Q. After this conversation what did you do?

A. I drove to the tavern.

Q. What occurred there?

A. She wanted to meet a Mr. Nothey there, but when we arrived at Surrattsville, at half past 12 m., Nothey was not there, and she had a messenger despatched for him, with word that he should meet her there at 2 o'clock. We then drove further on to Mr. Bennett Gwynn's, where we took dinner. After dinner, Mr. Gwynn, Mrs. Surratt, and myself returned back to Surrattsville.

Q. What occurred there?

A. Mrs. Surratt went into the parlor, and this time found Mr. Nothey there. She had an interview with him.

Q. Then what occurred?

A. I do not know what occurred. I was not in the parlor when they had this interview.

Q. I only ask what you saw and heard?

A. After they had concluded that business, Mrs. Surratt got into the buggy and returned to town.

Q. At what time did you get back to town?

A. We got back to town between five and six o'clock; perhaps not until six.

Q. Did anything occur that night with any of these parties after you got back?

A. No, sir.

Q. On the next day, Wednesday?

A. No, sir.

Q. On Wednesday evening?

A. No, sir.

Q. On Thursday?

A. No, sir,

Q. On Thursday evening?

A. No, sir.

Q. Now I come to Friday morning, the day of the assassination; what occurred on that morning?

A. On Friday morning I went to my office as usual; arrived there at nine o'clock. This was Friday, the 14th of April. Was at the office untilabout half past ten, when an order came from the Secretary of War to the effect that those clerks under his charge who desired to attend divine service that day might do so.

Q. This was Good Friday?

A. Yes, sir. I left the office and went directly to St. Matthew's church, at the corner of 15th and H streets. After service was over, about a quarter of one or one o'clock, perhaps, I went home to Mrs. Surratt's house.

Q. At what time?

A. I got home at one o'clock or a little after one. I took some lunch, and then went up to my room and sat down and wrote a letter.

Mr. BRADLEY. Of what earthly consequence is all this?

Mr. PIERREPONT (to the witness.) That is not important.

WITNESS. About half past two or twenty or twenty-five minutes after two, I heard a knock at my room door. In opening the door I saw Mrs. Surratt. She stated to me that she had received a letter from Mr. Charles Calvert about her property, and that it would be necessary for her to go into the country again and see Mr. Nothey, who owed her $479 with interest on the same for thirteen years.

Q. The same Mr. Nothey with whom you had seen her on the 11th?

A. Yes, sir. She gave me a ten-dollar note with which to go and get a horse and buggy. As I went out the parlor door, John Wilkes Booth came in. He shook hands with me and then went into the parlor. I then went to Mr. Howard's stable and there saw Atzerodt, who was endeavoring to hire a horse. His request was not complied with. He could not get one. I asked him what he wanted with a horse. "O," he says, "I want to send off Payne." I then went to the post office and dropped the letter I had written and returned to Mrs. Surratt's house.

Mr. BRADLEY. Did you get the buggy?

A. Yes, sir.

Q. And you went back with the buggy?

A. Yes, sir; I went up into my room for a minute or two, and as I passed the parlor door I saw Mrs. Surratt and Booth in conversation.

Q. What time in the day was this?

A. I cannot state the precise hour. It was between twenty-five minutes past two, and twenty or twenty-five minutes to three. Booth was standing with his back against the mantel-piece with his arm resting on it, and Mrs. Surratt had her back towards him.

Q. What further?

A. I went down to the buggy, and Mrs. Surratt came down in a few moments, and was just about getting into the buggy when she said: "Wait, Mr. Weichmann, I must get those things of Booth's." She went up stairs into the house, and came down with a package in her hand. It was a package wrapped up in brown paper, tied round with a string, I believe, and, to the best of my knowledge, about five or six inches in diameter. I did not see the contents of the package.

Q. Did you see what was done with it?

A. It was put in the bottom of the buggy. Mrs. Surratt stated that it was brittle. She said even that it was glass, and was afraid of its being wet. I then helped her into the buggy, and we drove off.

Q. On the way down, did anything occur of any note?

A. Yes, sir; the buggy was halted once near a blacksmith's shop, about three miles from Washington, on the road to Surrattsville. There were some pickets there on the left-hand side of the road near the blacksmith's shop. The soldiers were lolling on the grass, and the horses were grazing about. Mrs. Surratt had the buggy halted, and wanted to know how long those pickets would remain there. She was informed that they were withdrawn about 8 o'clock. She said: "I am glad to know it," and drove off.

Q. Did anything further occur until you got down to the house?

A. No, sir.

At this point the court took a recess until to-morrow (Friday) morning at 10 o'clock.

FRIDAY, *June* 28, 1867.

The court met at ten o'clock a. m.

Examination of LEWIS J. WEICHMANN.

By Mr. PIERREPONT:

Q. When the court adjourned yesterday you were at the point of progress towards Surrattsville where you and Mrs. Surratt met the pickets, or men who spoke of pickets. Will you proceed to state what occurred after that?

A. Mrs. Surratt's manner all the way down was very lively and cheerful. We arrived at Surrattsville about half past four or five. Mrs. Surratt got out. She took out of the buggy, or rather I took out and gave to her, the package that had been placed in the bottom of the buggy. She went inside into the

parlor of Mr. Lloyd's house there. In a short time she called me and desired me to write a letter for her to Mr. Nothe. Would you like to have the contents of that letter stated?

Mr. PIERREPONT. If you have not the letter you need not state the contents; you may, however, state anything Mrs. Surratt told you.

WITNESS. She told me to write a letter that unless Mr. Nothe came forward and paid that note at once she would enter suit against him immediately.

Q. Did you write a letter at the house on that day?

A. Yes, sir; in the parlor.

Q. What day?

A. Fourteenth of April, 1865.

Q. The day the President was murdered?

A. Yes, sir.

Q. What happened further on that day?

A. She desired me also to compute the interest on four hundred and seventy-nine dollars for thirteen years.

Q. Anything further after that at Surrattsville?

A. I sealed the letter and put it in an envelope; she gave the letter to Mr. Gwinn to deliver to Mr. Nothe; then I went out and for my own amusement drove the buggy up and down the road for about half or three-quarters of an hour.

Q. Were you there when Mr. Lloyd returned?

A. Yes, sir; he returned at about half-past six, just as Mrs. Surratt got into the buggy ready to return to the city. I saw Mr. Loyd; he recognized me. He noticed that the front spring of the buggy was broken; he called Mrs. Surratt's attention to it, and she told him to get a little piece of rope and tie around it, that it might be fixed; he did so. In order for him to do so it was necessary for him to place himself between the horse and buggy.

Q. Did he go there and do it?

A. Yes, sir, he fixed it.

Q. Anything further connected with the buggy?

A. No, sir.

Q. Did you see Mrs. Offutt there?

A. Not that I remember.

Q. What hour did you start for home?

A. We left Surrattsville on our return home about half-past six in the evening.

Q. What occurred on the way home with Mrs. Surratt; was she very cheerful on the way returning?

A. On our way home she said she was very anxious to be home at nine o'clock; that she was to meet some gentlemen there.

Q. Did she state who?

A. I asked her who it was, if it was Booth. She made no reply.

Q. What further occurred in returning?

A. I further stated something about Booth's being in the city here and not acting; I asked her why he was not acting. Her reply was, Booth is done acting and is going to New York soon, never to return. She turned round to me and asked if I did not know that, or if I did not know that Booth was crazy on one subject; I told her I did not. What that one subject was she never stated to me. On our return we met the pickets I had seen stationed on the left side of the road as we went down. The soldiers at this time were on their horses returning to the city; our buggy passed right between them. I should suppose there were four or six soldiers on horseback, and I remember distinctly that the buggy passed right between them.

Q. When you got on the hill in front of the city did anything occur?

A. Yes, sir; just about two miles from Washington there is a very high hill, which commands a fine view of the city. That evening of the 14th there was

a brilliant illumination in Washington on account of the restoration of the flag over Fort Sumter. I made some remarks to Mrs. Surratt, saying that it was better for the country that peace should return; she said, "I am afraid that all this rejoicing will be turned into mourning and all this gladness into sorrow."

Q. We now come down to the time you reached home.

WITNESS. I wish to state the end of this interview. I turned round to her and asked what she meant. She said that after sunshine there was always a storm; that the people were too proud and licentious, and that God would punish them.

Q. Anything further in that conversation?

A. No, sir.

Q. Then I will come down to the time you reached home. What hour was that?

A. Just as we came into Pennsylvania avenue, near the Capitol, we saw a torch-light procession coming either up or going down the avenue. The horse shied at the brilliant lights and we were compelled to turn up Second street.

Q. After turning from the torch-light procession, where did you then go?

A. We arrived at home at 9 o'clock, or a few minutes before nine. I helped Mrs. Surratt to get out, and then returned the buggy. We left Surrattsville at half past six, and it takes two hours or two hours and a half to come to Washington. I returned the buggy to Howard's stable, which was right back of Mrs. Surratt's house on G street. I then immediately returned home. I then went down and partook of some supper. Mrs. Surratt the same evening showed me a letter which she had received from her son. While I was sitting there eating supper with Miss Fitzpatrick, Miss Jenkins, Miss Surratt, and Mrs. Surratt in the room, I heard some one very rapidly ascending the stairs.

Q. What stairs?

A. The front stairs—the stairs leading to the second story. Mrs. Surratt, herself, answered the bell.

Q. You mean the stairs outside of the house?

A. Yes, sir.

Q. Mrs. Surratt answered the bell—that is, she went to the door?

A. Yes, sir. The servant remained below. The footsteps I heard going into the parlor.

Q. Were they the footsteps of a man or a woman?

A. The footsteps sounded to me like those of a man, made by boots. A woman generally makes a very light tread, and would ascend stairs without making any noise at all.

Q. How long did he stay in the parlor?

A. He remained there about five minutes, and then I heard the same footsteps descending the stairs.

Q. What occurred with Mrs. Surratt after the footsteps descended the stairs; did she come down or remain up?

A. She remained in the parlor. After supper I went into the parlor, and the young ladies who had been at supper with me also came into the parlor. We sat and talked there. Mrs. Surratt once asked me where the torch-light procession was going that we had seen on the avenue. I told her that I thought it was a procession of arsenal employés going to serenade the President. She replied that she would like to know very much, as she was interested in it. As I recollect now, her manner appeared to me to be very nervous, and very restless. I once asked her what was the matter. She said she did not feel well. She had some prayer beads in her hand—she was walking up and down the room. She once asked me to pray for her intentions. I asked her what her intentions were. She said I never prayed for any one's intentions unless I knew what they were.

Q. Did this nervous excitement continue?

A. Anna Surratt, Miss Fitzpatrick, and I were jesting and laughing a good deal; Mrs. Surratt said "Oh, Mr. Weichmann, you and the girls are making too much noise; it is time for you to be off to bed anyhow;" and in a playful manner she chased us out of the parlor. I know Miss Fitzpatrick, Miss Jenkins, Miss Surratt, and I left the parlor at the same time, leaving Mrs. Surrat there alone. I retired to my room perhaps ten or fifteen minutes before 10 o'clock. Miss Jenkins and Miss Surratt retired to their rooms in the attic about the same time, and bade me good night at the door of my room.

Q. Were their rooms over yours?

A. They were not exactly over mine, but in the story above, in the attic. Miss Fitzpatrick occupied Mrs. Surratt's room. Mrs Surratt occupied the room immediately in the rear of the parlor—in other words, she used the back parlor as a bed-room.

Q. Miss Fitzpatrick slept in that room?

A. Yes, sir; with Mrs. Surratt.

Q. Did anything occur in regard to your health that night requiring you to get up?

A. The next morning, about 2 o'clock, I had been to the yard, had gotten to my room again, gone to bed, and was just about falling asleep, when I heard the door bell ring very violently. It rang several times in very quick succession. There were only two gentlemen in the house, at that time, to my knowledge, Mr. Hollahan and myself. I drew on my pants, and, with my night-shirt open in front, barefoot, I went down to the front door. I rapped on the inside of the front door and inquired who was there. "Government officers," was the reply, "come to search the house for J. Wilkes Booth and John Surratt."

Q. What did you say?

A. I told them that neither of them were at home.

Q. What occurred further?

A. "Let us in anyhow," said they; "we want to search the house."

By the COURT:

Q. Was this on the morning of Saturday?

A. Yes, sir; about two or half past two on the morning of April 15. I then told them it would first be necessary for me to ask Mrs. Surratt's permission; in order to do so, I went to her bed-room door, which was immediately in the rear of the parlor, and rapped, saying "Mrs. Surratt, here are government officers who wish to search the house." "For God's sake let them come in," said she; "I expected the house would be searched."

Q. Did you let them in?

A. Yes, sir; I let them in.

Q. Who were they?

A. There were about six or eight officers, as near as I can remember now; I remember two more particularly, Clarvoe and McDevitt, who belong to the city Metropolitan Police here. Some men had been stationed outside the house in the alley-way, and some had gone into the yard; Clarvoe, McDevitt, and others immediately proceeded to search the house. They first went to the attic, where Miss Jenkins and Miss Surratt were sleeping. I did not go up there with them.

Q. You may state in what part of the house you went with them?

A. I returned to my room; the detectives also came to my room.

Q. Did you dress yourself that morning.

A. Not just then; the detectives commenced to search my room, they looked in the closet, looked under the bed, and looked all around. I asked them for God sake tell me what is the matter; what this means; what means searching the house so early in the morning; one of them looked at me and said, "Do you pretend to tell me you do not know what happened last night." I said I did, I did not know what had happened.

Q. Was this said with an air of great incredulity to you?

A. I cannot recollect the air.

(This examination objected to by Mr. Bradley—it was not competent to ask what air the officer had.

Objection overruled.)

Q. State what was the manner of these officers in making this inquiry?

A. They appeared to be astonished that I had not known what had transpired. Then Mr. Clarvoe said, "I will tell you," and he pulled out a piece of a cravat; there was blood on it. Said he, "Do you see that blood? That is Abraham Lincoln's blood; John Wilkes Booth has murdered Abraham Lincoln and John Surratt has assassinated the Secretary of State." I then went down stairs with Mr. Clarvoe and Mr. McDevitt. Mrs. Surratt just then came out of her bedroom. I said, "What do you think, Mrs. Surratt—Abraham Lincoln has been murdered." I did not say Abraham Lincoln, I said, "President Lincoln has been murdered by John Wilkes Booth, and the Secretary of State has been assassinated." I did not bring her own son's name out, from respect to her feelings; she raised her hands and exclaimed, "My God, Mr. Weichmann, you don't tell me so." She seemed astonished at the news. At this time Miss Surratt and Miss Jenkins were not down stairs.

Q. Did they come down afterwards?

A. After the detectives had gone they came into the parlor; I was there, Miss Jenkins was there, Miss Fitzpatrick was there, Miss Surratt and Mrs. Surratt were there.

Q. What did Mrs. Surratt then say?

A. The talk was about the murder; every one in the room had been told that Booth had done it; Anna Surratt commenced to weep and said, "Oh! ma, all this will bring suspicion on our house; just think of that man (we were speaking about Booth at the time) having been here an hour before the murder." "Anna, come what will," she replied, "I think John Wilkes Booth was only an instrument in the hands of the Almighty to punish this proud and licentious people."

Q. Did you see the man whose footsteps you have mentioned?

A. No, sir; I was in the kitchen at the time; the kitchen was down stairs, and it was simply impossible for me to see him.

Q. What do you call the kitchen?

A. The front basement room.

Q. Was it the kitchen or dining room.

A. The dining room; we always took our supper in the dining room and not in the kitchen; there are two rooms in the basement, the front room is the dining room; in the rear is the kitchen.

Q. What further occurred?

A. I returned to my room and did not see Mrs. Surratt again till morning.

Q. What occurred on the morning of the 15th.

A. Nothing in particular; I do not think I have any more evidence on that point; I was at breakfast on that morning.

Q. Was she at the table?

A. Yes, sir.

Q. You did not see John there that night?

A. No, sir; I said to Mrs. Surratt and Mr. Hollahan at the table that I had my suspicions about this business, and I was going to the government and state my suspicions about it; state who I had ever seen in Booth's company and do all I could to bring these parties to justice.

Q. Did you go to the government?

Objected to by Mr. Bradley.

The COURT. He may state whether he gave information to the government, but not detail any conversation he had.

WITNESS. I went to Superintendent Richards's headquarters.

Mr. PIERREPONT. You need not go into particulars; I simply want to know if you did go and give information.

Q. You stated that Mr. Hollahan was in the house when you went out to give information to the government; what did you or Mr. Hollahan or McDevitt or any of these parties do?

A. Mr. Hollahan was with me when I went to the Metropolitan Police headquarters and stated what he knew to McDevitt; we went to the lower portion of Maryland that day.

Q. Who went?

A. McDevitt, Bigley, Clarvoe, Mr. Hollahan, myself, and others.

Q. Where did you go to?

A. We first went to Mrs. Herold's house.

Q. What day was that?

A. That was the 15th.

Q. At what time of day did you reach Mrs. Herold's house?

A. That morning I had met the stable keeper from whom a horse had been hired the previous night.

Mr. BRADLEY said he hoped the witness would be required to answer the question and not go off on collateral matters.

WITNESS. I went with McDevitt to Mrs. Herold's house; we asked Mrs. Herold where her son was.

Q. Where is Mrs. Herold's house?

A. It is at the Navy Yard; I ascertained from Dr. Walsh where the house was; I did not know myself.

Q. From Mrs. Herold's house did you go to the stable you have spoken of, or did you go before?

A. It was before.

Q. What occurred at the stable?

A. I met a man by the name of Fletcher.

Mr. BRADLEY. Do not state anything Fletcher said.

Q. Did you make any inquiry there about a horse?

A. I did; I asked Fletcher to give a description of the party who had hired a horse from him.

Q. Did he give you a reply to that question.

A. Yes, sir.

Q. What time in the day did you get back to the house after you had been at Mrs. Surratt's?

A. We went to the lower part of Maryland; I was never at Mrs. Surratt's house after I took breakfast there that morning.

Q. You went into what portion of Maryland?

A. We went away down as far as Piscataway.

Q. How long did you stay there?

A. We returned in the evening and searched the Pennsylvania House, where Atzerodt had been stopping; this was on the evening of the 15th.

Q. Next morning where were you?

A. It was then suspected that Atzerodt had gone to Baltimore.

Mr. BRADLEY requested that the witness be instructed to answer questions.

The COURT so instructed the witness.

Q. Did you go to Baltimore?

A. Yes, sir.

Q. For what?

A. To see if Atzerodt was there.

Q. Who went?

A. Mr. Hollahan, Mr. Clarvoe, Mr. McDevitt, and myself.

Q. When did you, Hollahan, Clarvoe, and McDevitt go to Baltimore in search of Atzerodt?

A. Sunday, the 16th of April.

Q. How long did you stay there?

A. I staid until the following Monday morning, and reached here about 6 o'clock on the 17th of April, Monday. I took an early train, I believe the half-past four train, from Baltimore.

Q. How long did you stay here?

A. Until that afternoon, at 3 o'clock. On Monday afternoon, the 17th, at 3 o'clock, we started for Canada in pursuit of John H. Surratt.

Q. Who went?

A. Mr. Bigley, Mr. McDevitt, Mr. Hollahan, and myself. Clarvoe also, and Mr. Reese or Neese, I forget the name, started with us. Clarvoe did not go to Canada.

Q. Where did you go to on that afternoon of the 17th?

A. We reached Philadelphia about 11 o'clock.

Q. Did Clarvoe go on to Philadelphia with you?

A. Yes, sir.

Q. Did he leave you there on the way?

This course of examination objected to by Mr. Bradley as leading.

Mr. PIERREPONT said that if he allowed the witness to go on his own way counsel found fault that he went into collateral matters; he was now trying to keep him to the point.

WITNESS. Clarvoe there arrested a man by name of Celestina.

Q. Did Clarvoe or not go on with you?

A. He returned to Washington that night.

Q. Who went on to New York?

A. Neese, Bigley, Hollahan, McDevitt, and myself.

Q. What time did you get to New York?

A. We reached New York on the morning of the 19th of April.

Q. What day of the week?

A. That was Wednesday.

Q. Where did you stop?

A. We did not stop at any place; we immediately took a car.

Q. Where did you take breakfast?

A. We got our breakfast at a hotel; I do not remember the name of it.

Q. What time did you take the cars?

A. We took the cars that morning at 6 o'clock.

Q. For what point?

A. We took the Hudson river road for Montreal, Canada, leaving New York on the morning of the 19th. We travelled all that day and reached Burlington, Vermont, on the evening of the 19th.

Q. Where did you go after you got to Burlington on the evening of the 19th?

A. We registered false names at the American Hotel, Burlington, Vermont, and left the next morning.

Q. State the false names which you entered?

A. I was Mr. Thompson.

Q. What name did Hollahan enter?

A. That I do not remember.

Q. Do you remember any of the other false names?

A. Bigley was Porter.

Q. Do you remember the name McDevitt entered?

A. No, sir, I do not remember his nor Hollahan's.

Q. Now, can you tell the false names each entered by referring to this register? (Register produced.)

A. No, sir; I do not recognize my handwriting there. We staid there all

night. I do not know of my own knowledge that it was the American House. I inquired the other day what the name of the white building was, and they told me it was the American House.

Mr. BRADLEY. Inquired of who?

A. A gentleman by the name of Blinn.

Q. After you registered your names there what did you do?

A. We staid there that night, and the next morning started for Montreal, reaching there about noon. We registered our names at Burlington on the evening of the 19th, and left for Montreal on the 20th.

Q. Did you sleep at the hotel on the night of the 19th?

A. We slept at a hotel, and on the next morning started.

Q. Give a description of the building you slept in.

A. It was a square white building.

Q. You say you did not know the name then?

A. I do not remember the name now of my own knowledge.

Q. What time on the morning of the 20th did you leave the hotel?

A. We took the cars I suppose that morning between 5 and 7 o'clock.

Q. Did you all leave together?

A We left together.

Q. Where did you go that day, the 20th?

A. We went to Montreal.

Q. How long did you stay in Montreal?

A. I do not know whether I left there that afternoon or the next evening for Quebec with Mr. Bigley.

Q. Did anybody else go with you to Quebec?

A. No, sir.

Q. Where did you leave Hollahan and McDevitt?

A. At Montreal.

Q. At what house, do you remember?

A. I do not remember the name of the hotel now. It is one of the small hotels in Montreal. I think it was the St. James. We stopped at the Ottawa House for half the day.

Q. From Quebec where did you go?

A. We returned direct to Montreal.

Q. From there where did you go?

A. Then we returned to the United States.

Q. When did you get back?

A. We reached Washington about noon on the 29th of April.

Q. Who reached Washington with you?

A. Mr. Hollahan, Mr. Bigley, and McDevitt. In New York on our return we met Superintendent Richards, and he came on to Washington with us.

Q. You have stated that on the evening of the murder there was a colored woman in the house by name of Susan; when did she come there, if you know?

A. To the best of my knowledge Susan had been there only about three weeks before the murder.

Q. After the murder were there any clothes of yours left there to wash?

A. No, sir. I always gave my washing in Monday or Tuesday.

Q. You gave in no washing to be done, then, after the previous Tuesday?

Mr. BRADLEY. I cannot really see the bearing of where the witness had his washing done.

Mr. PIERREPONT. You will, perhaps, see before you are a great deal older.

The COURT inquired what relevancy the testimony had?

Mr. PIERREPONT replied he proposed to show that the washing left was John Surratt's.

Q. Did you leave any clothes to be washed that week after Monday or Tuesday?

A. No, sir.
Q. After Susan came there who did your washing?
A. Susan did my washing for only three weeks.
Q. Before that who did it?
A. The colored servant, whoever was there before.
Q. State how long you had had it done at the house.
A. About four months.
Q. Did you have it done by Susan Jackson four months?
A. No, sir; if I said so it was a mistake.
Q. Were you at Mrs. Surratt's house on the 16th of March, 1865?
A. Yes, sir.
Q. Will you tell what men came into the house that night and what happened?
A. That afternoon I had returned from my work and on going to the attic, where the day previous——
Mr. BRADLEY. Don't go into that; just answer the questions asked.

Mr. PIERREPONT:

Q. Who did you see there?
A. I saw Payne, Booth, and John Surratt, come into the room about half-past six in the evening.
Q. State how they were dressed or armed, if they were armed?
A. Surratt was the one who came in first, as I was sitting there. He had his pants in his boots. He was much excited, and had one of these four-barrelled Sharp revolvers in his hand; one of these little square four-barrelled pistols that you could easily put in a vest pocket. I asked Surratt what was the matter. He levelled his pistol at me and said, "My prospects are gone; my hopes are blighted; I want something to do; can you get me a clerkship?" I told him he was foolish; that he ought to settle down and be a sensible young man.
Q. State the degree of excitement?
A. He was very much excited. I cannot remember the degree now.
Q. These other men, what did they do and what happened?
A. In about ten minutes after Payne came into the room. He too was very much excited; his face was red with excitement.
Q. How was he dressed?
A. He was dressed in the same gray clothes he was on his second visit to Mrs. Surratt. Raising his vest, I noticed that he had a pistol on his hip.
Q. Did Booth come in?
A. About fifteen minutes after Booth came in.
Q. State how he was dressed?
A. In his usual mode—dark clothes; he had a riding whip in his hand and walked round the room two or three times. He did not at first notice me; I called his attention and he said, "Halloo! You here? I did not see you."
Q. Did you see any arms on him?
A. No, sir. The three then went up stairs into the back attic where Payne had his room at that time, and were there, to the best of my knowledge, about thirty minutes.
Q. What did they do then?
A. They all left the house together.
Q. Who left the house?
A. Payne, Surratt, and Booth.
Q. When did you next see Surratt?
A. I saw him the same evening, and asked him where Payne had gone, and where Booth had gone.
Q. What did he say?
A. He said that Payne had gone to Baltimore, and that Booth had gone to New York.

Q. Will you not tell the jury the manner of these men?

A. They were all very excited. Booth was so excited that he was white with excitement. Payne was a different temperament, he was very red.

Q. Two days after this did you see anything of these men, if so state it?

A. I went to the theatre two days afterwards when Booth played Pescara the Apostate. On leaving the theatre, Herold, Atzerodt, Mr. Hollahan, Surratt, and myself, came out all together. Mr. Hollahan, Surratt, and I, went as far as the corner of Tenth and E streets. Surratt then turned around and saw that Atzerodt and Herold were not following us. He directed me, being more intimate with me than with Mr. Holohan to go back and tell Herold and Atzerodt to come to Kloman's saloon on Seventh street, and partake of an oyster supper with them.

Q. Did you do so?

A. I went to the saloon right adjoining the theatre. As I came in I saw Booth, Herold, and Atzerodt, talking very confidentially and very friendly together, near the stove. When I approached them Booth came forward and said, "Mr. Weichman, won't you come and take a drink." I, of course, consented; I took a glass of ale with Booth, Herold, and Atzerodt.

Q. Then what followed?

A. Then the three went aside again and had a little conversation; then Herold, Atzerodt, and myself left and joined Surratt and Mr. Hollahan near Eighth and E streets, and went and ate our oyster supper at Kloman's. The whole party consisted of Surratt, Hollahan, Herold, Atzerodt, and myself.

Q. Was Booth there?

A. No, sir; Booth was not.

Q. How often was Booth at Mrs. Surratt's house two or three months prior to the murder?

A. He came very frequently. It was a very common thing for me to see him in the parlor with Surratt, when Booth was in town after 4 o'clock. They appeared like brothers.

Q. Was there any term by which Booth was called?

A. Mrs. Surratt appeared to like him very much.

Q. What term did she use in speaking of him?

A. I heard her once when Booth had stayed two or three hours in the parlor call him "Pet," saying, "Pet stayed two or three hours in the parlor last evening." I am positive she used the word "Pet." She named the hours from 10 at night until 1 in the morning.

Q. What was the character of his intimacy there?

A. I think he was nothing more than a friend.

Q. State the character of his intimacy.

Mr. MERRICK. Can that question be asked.

The COURT. It is rather vague in its character.

Mr. PIERREPONT said his desire was to avoid a leading question, and his object to find out whether Booth was very intimate there.

Mr. BRADLEY said facts could be stated.

Q. Please state the facts in regard to his intimacy?

A. He was just as intimate there as I was.

Q. Take that telegram (telegram exhibited to witness) and state if you know in whose handwriting it is?

A. I know the handwriting.

Mr. BRADLEY. Before you state in whose handwriting it is I want to ask you two or three questions. What means have you of knowing the handwriting of that telegram?

A. In the first place the handwriting corresponds exactly in style and character with a telegram I received from Booth. He makes his "B's" in the same way, and his "e's" in the same way, more like "i's."

The COURT. State whether you have seen that person write.

A. I have seen Booth write; I have had his autograph in my possession for weeks.

Mr. BRADLEY. Have you got his autograph now?

A. No, sir; I don't care about having his autograph in my possession now.

Q. How do you know it was his autograph?

A. I saw him write it.

Q. When and where?

A. I saw him write some time in April.

The COURT. The proper way to lay the foundation for identifying writing is to ask the witness if he has ever seen the party write.

By Mr. PIERREPONT:

Q. Have you seen this person write?

A. I have.

Q. Have you received notes and cards from Booth?

A. Booth gave me his autograph.

Q. Have you received a telegram from Booth?

A. I received a telegram on the 23d of March.

Q. Do you know Booth's handwriting?

A. Yes, sir.

Mr. PIERREPONT. I now offer to prove by this witness the handwriting of this telegram.

Mr. BRADLEY said that he desired to take an exception to this ruling—he was not permitted to cross-examine the witness—as to his ability to identify the handwriting.

The COURT said that counsel could cross-examine in the usual way; this was not the time to cross-examine.

Mr. PIERREPONT. What do you say as to the handwriting of this telegram?

WITNESS. It is Booth's handwriting.

Mr. PIERREPONT then placed in evidence the following telegram?

"NEW YORK, *March* 13, 1864.

"*To Mr. McLaughlin, No. 57 North Exeter street, Baltimore. Md.:*

"Don't you fear to neglect your business. You had better come at once.

"J. BOOTH."

Mr. PIERREPONT explained that the telegram was written on a printed blank marked 1864, but on the back of it was an indorsement 1865, and he had no doubt 1865 was the proper date. (To witness:) Now look at this telegram and (another telegram exhibited) state in whose handwriting it is?

WITNESS. That is Booth's handwriting.

Mr. PIERREPONT, after making the same explanation as to date being 1865 instead of 1864, read and placed in evidence the following telegram:

"NEW YORK, *March* 27, 1864.

"*To Mr. McLaughlin, No. 59 North Exeter street, Baltimore, Md.:*

"Get word to Sam. to come on. With or without him, Wednesday morning we sell—that day, sure. Don't fail.

"J. WILKES BOOTH."

Q. Look at the letter now shown you (letter exhibited to witness) and state in whose handwriting it is?

A. It is in my handwriting.

Q. Is it the one you spoke of in the testimony?

A. Yes, sir; it is one I wrote for Mrs. Surratt on the 14th of April.

Mr. PIERREPONT, read it.

Witness read the letter as follows:

"SURRATTSVILLE, MARYLAND, *April* 14, 1864.

"*Mr. John Nothey:*

"SIR: I have this day received a letter from Mr. Calvert, intimating that either you or your friends have represented to him that I am not willing to settle with you for the land. You know that I am ready and have been waiting for the last two years, and now if you do not come within the next ten days I will settle with Mr. Calvert and bring suit against you immediately. Mr. Calvert will give you a deed on receiving payment.

"M. E. SURRATT,
"*Administratrix of J. H. Surratt.*"

Mr. BRADLEY. Was it signed by Mrs. Surratt or by you?

A. By me.

By Mr. PIERREPONT.

Q. By whose direction did you sign it?

A. Mrs. Surratt's.

Q. Where was it written?

A. In the parlor of Mrs. Surratt's house at Surrattsville. I addressed the envelope there.

By a JUROR.

Q. Did I understand you that you signed her name to it?

A. Yes; she told me to sign her name; she said it did not make any difference.

Mr. PIERREPONT offered to put in evidence all the contents of the diary taken from the body of J. Wilkes Booth.

Mr. BRADLEY said they had not been identified.

Mr. PIERREPONT said he was under the impression they were identified by the witness Conger; if not, he would withold them for the present.

Q. Look at the entries in the book now shown you (diary taken from the body of J. Wilkes Booth) and say in whose handwriting they are?

A. I recognize them as Booth's handwriting.

Q. Look also at the leaf in it (letter to Dr. Stewart) and say in whose handwriting that is?

A. I recognize both the diary and leaf as in Booth's handwriting; it is a smaller hand than he generally wrote—such as he would write in pencil.

Mr. PIERREPONT then offered the diary in evidence.

The letter referred to was also placed in evidence, and is as follows:

"MY DEA—, [piece torn out,] forgive me, but I have some little pride. I cannot blame you for want of hospitality. You know your own affairs. I was sick, tired, with a broken limb, and in need of medical advice. I would not have turned a dog from my door in such a plight. However, you were kind enough to give us something to eat, for which I not only thank you; but on account of the rebuke and manner in which, to—[piece torn out.] It is not the substance, but the way in which kindness is extended, that makes one happy in the acceptance thereof. The sauce to meat is ceremony. Meeting were bare without it. Be kind enough to accept the enclosed $5 (although hard to spare) for what I have rec'd.

"Most respectfully, your obedient servant."

Q. Look at this card and see if you know this handwriting. (Card shown to witness.)

A. That is in the handwriting of John H. Surratt.

The card being one identified by the witness, Dawson, as having fallen from the vest pocket of Booth, was read and placed in evidence as follows: "J. Harrison Surratt: I tried to get leave, but could not succeed."

Q. Have you had any experience in writing yourself—I mean beyond the ordinary experience?

A. Yes, sir.

Q. What can you write?

A. I write short-hand; I write the German alphabet. I have had a great deal of experience in comparing letters, and in reading letters hard to decipher. I taught writing for about sixteen months at school.

Q. How long were you employed at the War Department?

A. From the 9th of January, 1864, till the 14th of April, 1865.

Q. Do you know whether there is a difference in people in their capacity to detect forgery?

Question objected to by Mr. Merrick.

Mr. PIERREPONT stated there were experts on various subjects. His object was to show, as the law required before offering evidence, that there were such things as experts on the subject in question.

The COURT said the question could be asked witness, what experience he has had to show that he is or is not an expert.

Mr. PIERREPONT. I will ask that question.

WITNESS. In 1866 I was reporting a trial in Philadelphia. Three letters were submitted to me which had been found in the west. The letters were in different kinds of handwriting.

Mr. BRADLEY. We object to this.

Mr. PIERREPONT. Very well, I will not ask for any more experience if gentlemen do not want it.

(To witness.) I want you to take this letter (letter known as the Charles Selby letter) and examine it.

WITNESS. The handwriting appears to me to be evidently disguised.

Q. Do you think that is written in the natural hand?

A. No, sir; the letters are all disjointed.

Q. What is your opinion as to its being a disguised hand?

A. It is my opinion it is a disguised hand.

The court here took a recess for half an hour.

AFTERNOON SESSION.

LOUIS J. WEICHMANN: examination resumed.

Upon reassembling Mr. Pierrepont stated that he had in his possession two letters which he had omitted to show the witness when he was before on the stand, and he now proposed to hand them to him, and ask him in whose handwriting they were. The two letters were then exhibited to the witness.

Q. Will you state in whose handwriting they are?

A. This one (letter dated Surrattsville, November 12, 1864) is in Surratt's handwriting. This one (dated September 21, 1864) is also in Surratt's handwriting. He wrote two hands.

Mr. PIERREPONT. I am simply asking you if they are both in Surratt's handwriting?

A. Yes, sir. I will state that I did not receive the letter I first examined at all. The second one (one dated September 21, 1864) I did receive, and it is the last one I ever did receive from Surratt.

Mr. PIERREPONT. I now propose to read these letters.

Mr. BRADLEY. I object. I desire, your honor, first to see the letters, and then I will proceed to state the grounds of my objection.

The letters were then handed to the court and read by him, when

Mr. BRADLEY said: I do not propose to argue the question, if your honor please, but I rather think that this is the first time in the history of criminal jurisprudence in this country, since the case of Algernon Sidney, where a paper

or the draft of a paper found in the possession of the defendant, and never out of his possession until taken from him by the government, has been offered or sought to be offered in evidence in a court of justice. This first letter the witness acknowledges was never received by him. It was found in possession of the defendant, and was never out of his possession until taken by the government. Can it then, sir, be introduced here? As to the second paper—the one dated September 21—I am not conscious of any possible bearing it can have upon the issue in this case. It is wholly immaterial; has no reference whatever to any matter in controversy, and is therefore not admissible on that ground.

Mr. PIERREPONT. If your honor please, if the counsel had not stated what he did with so much apparent confidence, it would have surprised me. The counsel thinks this is the first time that a paper obtained under the circumstances this was has ever been sought to be introduced as evidence in a court of justice since the case of Algernon Sidney. I must say that this is the first time in the history of criminal jurisprudence when I have known it to be held that upon the seizure of a criminal a paper found in his possession which tends to throw any light whatever upon the crime with which he stands charged, whether such paper be written by himself or not, cannot be given in evidence.

Mr. BRADLEY. I did not make that point.

Mr. PIERREPONT. I thought that was the point.

Mr. BRADLEY. Then you misunderstood me.

Mr. PIERREPONT. Let me hear what it was.

Mr. BRADLEY. I stated that it was sought to introduce here a paper that had never been published by the party, that had been written long before any overt act was committed, if any ever was committed, and that had never been out of the possession of the defendant; and that such an offer was altogether improper and should not be entertained.

Mr. PIERREPONT. The objection to the reception of this paper, as I understand it, is that it was found with the defendant's papers. I claim that it was found with the defendant's papers, and hold that that is one of the strongest reasons why it is good evidence in this cause. In illustration I will refer to a case with which I think my learned friend is quite familiar. It was the case of a murder which had been committed in England, where no clue to the murderer could be found.

Mr. BRADLEY. Give us the name of the case.

Mr. PIERREPONT. I cannot recall the name.

Mr. BRADLEY. There are so many murder cases in England that it is difficult to remember them all.

Mr. PIERREPONT. I think you will call to mind the case when I state the facts. I think you will find it cited in Chief Justice Shaw's opinion in the Webster case, 5th Cushing, if I am not mistaken. As I said, during the investigation no clue to the guilty party could be found. Finally, in the vest pocket of a man who was suspected was found a piece of paper on which was some writing. It was discovered that the wad which had been set on fire, and had fallen from the gun or was found in the wound or clothes, I believe, of the man who was shot, appeared to have been torn from this written paper that was found in the pocket of the suspected man. This evidence in regard to the paper and the wad was admitted; on that evidence the jury found him guilty, and on that evidence he was hanged.

Mr. BRADLEY. I do not dissent from that.

Mr. PIERREPONT. Anything that is found in the possession of a man accused of a great crime when he is arrested, that has any tendency to throw light upon the subject, however near or however remote, is evidence to go to the jury for them to weigh and consider, whether it has any bearing upon the case or not.

Mr. BRADLEY. I do not wish to reply; I, of course, reserve my right to except.

Mr. MERRICK. If your honor will allow me a single word. I merely wish to state that I see a very wide difference between the case at bar and the case put by the learned counsel on the other side. In the case put by the learned counsel on the other side, a "thing" is found in the possession of the defendant, which "thing" is shown to be the counterpart of another "thing" used in the murder. The counterpart of the "thing" is that "thing" which bears relation to the principal, wherein the difference makes them identical. The counterpart of the "thing" used in the murder was still in the possession of the prisoner, and as a "thing" it was offered in evidence to show the identity of the two articles, and the connection of the prisoner with the murder. Here, however, it is not proposed to use the "thing" found in the possession of the prisoner, but the "thought" found in his possession. If this letter found in the possession of the prisoner was the counterpart of any other letter or paper found connected with the perpetration of the crime, for which the party is indicted, it would certainly be admissible; but it isn't proposed to use it as the material substance, but as the thought of the prisoner; and as long as the writing is still in his possession, the thought is unuttered, and it is not competent to be put in evidence. And, as my learned brother says, that was the great question which arose in Sydney's case, and was disregarded in that case, which resulted in a judicial murder, but was afterwards permanently established in the English law—that you could not determine handwriting by comparison; and that unspoken treason was not treason, although the document was written, and in possession of the party and treasonable in its character, yet being unspoken was not competent to go in evidence, for the reason that until thought is published it is not thought; it is no act. And so here. This letter being still in the possession of the defendant when taken by the government, is a thought unspoken, which the government cannot produce as the spoken thought of the party. I think your honor will perceive that the difference between the case put by the learned gentleman and the case at bar is very great.

Mr. PIERREPONT. I will only say that I do not want any "thought." It is the "thing" I am after.

Mr. MERRICK. Then I do not know what you want to read the letters for.

Mr. PIERREPONT. I repeat, I do not care anything about the "thought," I am after the fact.

Mr. BRADLEY. What is the "fact."

Mr. PIERREPONT. I want this letter—this letter just as it is.

The COURT. I shall let the letter in.

Mr. BRADLEY reserved an exception.

The letter was then read as follows:

"SURRATTSVILLE, *November* 12, 1864.

"DEAR AL.: Sorry I could not get up. Will be up on Sunday Hope you are getting along well. How are times—all the pretty girls? My most pious regards to the latter; as for the former, I have not a continental d—m. Have you been to the fair? If so, what have we now? I'm interested in the 'bedstead.' How's Kennedy? Tight, as usual, I suppose. Opened his office, I hear. Fifty to one 'tis a failure. Am very happy I do not belong to the 'firm.' Been busy all the week taking care of and securing the crops. Next Tuesday, and the jig's up. Good by, Surrattsville. Good by, God forsaken country. Old Abe, the good old soul, may the devil take pity on him.

"SURRATTSVILLE, MD.

"Test: JOHN H. SURRATT.

"To LOUIS J. WEICHMANN, Esq., *Washington city, D. C.*"

Attached to this is the following certificate:

"OFFICE OF THE PROVOST MARSHAL AND BOARD OF ENROLMENT OF THE DISTRICT OF COLUMBIA,
"*Washington, May* 10, 1865.

"The paper was given to Lieutenant Samuel K. Brown, V. R. C., department provost marshal, D. C., by Special Officer George Cottingham, of my force, who obtained it from the bar-tender of Lloyd at Surrattsville on the evening of April 28, 1865. Cottingham's statement is herewith appended.

"JAMES R. O'BEIRNE,
"*Major 22d Regiment V. R. C., Provost Marshal D. C*"

Mr. PIERREPONT. I now desire to have the jury see this writing for another reason connected with this letter.

Mr. BRADLEY. We have heard this letter read your honor, and if it is proposed to exhibit it to the jury for the purpose of having them institute a comparison of the handwriting, as I understand it to be, I object.

Mr. PIERREPONT. I have not yet made such a suggestion. Your honor has seen the difference in the handwriting of this same letter, and that is what I desire to have the jury see.

Mr. BRADLEY. Difference in the handwriting?

Mr. PIERREPONT. Yes, sir.

Mr. BRADLEY. Your witness says it is all the same handwriting.

Mr. PIERREPONT. Written by the same man.

Mr. BRADLEY. Does your honor rule that it can be shown to the jury.

The COURT. I see no reason why it should be kept from them.

Mr. BRADLEY. Very well, sir; I desire to reserve an exception.

The letter was here handed to the jury, when

Mr. PIERREPONT said: If the jury will look at the body of the letter and then at the bottom, they will see a difference in the handwriting.

The letter dated September 21 was then read, and afterwards handed to the jury for inspection. To the admission and exhibition of this letter to the jury Mr. Bradley also reserved an exception. The letter is as follows:

"SURRATTSVILLE, MD., *September* 21.

"LOUIS J. WEICHMANN, *Washington, D. C.*

"DEAR FRIEND: John Surratt is neither dead nor drafted, though he ran the gauntlet of both. I am just able to walk but a little, yet very weak. I have had the chills and fever pretty severely. In hopes I have entirely escaped, I shall be in Washington as soon as possible. I intend to stay up a few days in order to recuperate. Possibly we may come up sooner than we anticipate, on account of certain events having turned up. I am quite sorry Miss Estelle has gone to Philadelphia. There is no attraction there now for me. Miss Fannie and I were getting on a fair road to a flirtation when she bundled up bag and baggage and left for Washington. She says 'she is glad Mrs. Surratt intends moving to town.' All right. We will see. Write soon and tell me all the news. Nothing would give me greater satisfaction than to write a long letter. I am very happy to state that I escaped the draft. I sincerely hope you may do the same. Family all well and send respects to you. Yours, as ever,

"J. HARRISON SURRATT."

Q. Did you receive that?

A. I did. It was the last one I ever did receive from him.

Q. Did you hear anything said by Mrs. Surratt or John about a cotton or "ile" speculation?

A. Yes, sir. Shortly after Surratt's introduction to Booth, Surratt told me that he was going to Europe; that he was engaged in cotton speculations. He

stated this in the presence of his sister. He said that $3,000 had been advanced to him by some elderly gentleman residing in the neighborhood; and that he was going to Liverpool, from Liverpool to Nassau, and thence to Matamoras, in Mexico, to find his brother Isaac. He was in the habit of stating that very frequently.

Mr. BRADLEY, Was in the habit of stating all this, or what?

A. He stated the whole of what I have just said. At another time he said he was engaged in the oil business; that he had six shares of oil stock. Once he even approached me and asked me if I would not write an article for the newspaper to the effect that John Wilkes Booth, the accomplished actor, in consequence of having erysipelas in his leg, had retired from the stage and was engaged in the oil business. He stated that Booth had made quite a fortune, and had presented his sister with the money he had made out of the oil.

Q. Whose sister?

A. His own sister.

Q. Booth's sister?

A. Yes, sir. He wanted me to give him a puff, but I refused.

Q. Did he state in what paper he wanted you to put the article?

A. No, sir. He said he simply wanted me to write the article; that he would have it published.

Q. Did he name the paper?

A. No, sir.

Q. In this first letter the hand-writing at the bottom is very different from that in the body of the letter; will you state which hand Surratt usually wrote?

A. He usually wrote the hand at the bottom of it.

Q. The smaller one?

A. Yes, sir. The top hand is a back hand, or hand that he wrote by putting his pen between his first and second fingers.

Q. The body of the letter is not in his ordinary hand?

A. No, sir.

Q. You have spoken of places that you went to on your way to Canada. I want the jury to get an idea of the position of those places. Will you point out on that map the position of the different places you went to after leaving New York, on your way to Canada?

Witness did as requested.

Cross-examination by Mr. BRADLEY:

Q. What place are you a native of?

A. I am a native of Baltimore. I am a native of the United States, too.

Q. Do you mean Baltimore, Maryland?

A. Yes, sir.

Mr. BRADLEY. I believe that is in the United States.

Q. You say that you were educated at the college at Ellicott's Mills, where you met John Surratt?

A. Yes, sir.

Q. Were you ever at any place not a great distance from Baltimore for the purpose of getting an education?

A. I was at Borromeo college for a short while.

Q. Has that any other name in the neighborhood?

A. It is at Pikesville.

Q. Is there any place in that neighborhood called Texas, or Little Texas?

A. Yes, sir. I was teaching there two weeks.

Q. Did you come from Ellicott's Mills College, St. Charles College, to Washington, or whence did you come to Washington?

A. When I left St. Charles College, in July, 1862, I returned to Philadelphia, on a two months' vacation. In September, 1862, I accepted of a position

at Borromeo college, in Maryland; was there three months, and then went and taught two weeks at a little place called Texas. The schoolhouse being destroyed by fire I came to Washington, and accepted of a position in St. Matthew's Institute.

Q. Did you meet with a gentleman there named St. Marie?

A. I did.

Q. Where did you meet him?

A. I met him at Ellengowan, on the third of April, 1863.

Q. Where is Ellengowan?

A. Ellengowan and Texas are both one and the same.

Q. You met him then at Texas?

A. Yes, sir. I met him on the third of April, 1863. I was employed in Washington, but was making a visit at that time with Surratt. I introduced Surratt to St. Marie.

Q. On the third of April, 1863?

A. Yes, sir; good Friday, in the afternoon.

Q. How long did you stay there?

A. I left Washington on the second of April, 1863, and returned to Washington on the following Monday evening.

Q. Did you ever visit Texas after that?

A. I believe I did; I think the following Christmas.

Q. Did you ever visit it in company with Mr. Surratt after that?

A. I did not.

Q. You are positive about that?

A. I am. Surratt was with me at Ellengowan only once.

Q. You are distinct in your recollection of that?

A. Yes, sir.

Q. You were not there in 1865?

A. No, sir.

Q. When you came to Washington, do I understand you correctly that you accepted a situation in St. Matthews' Institute?

A. I accepted a position in St. Matthews' Institute in the latter part of December, 1862.

Q. What do you mean by "accepting?" Did you not seek it, and seek it earnestly?

A. Yes, sir, I sought it; I do not deny that. I was glad to get it, too.

Q. How long did you remain there?

A. I remained there from the 24th of December, '62, to the 9th of January, '64.

Q. Under what circumstances did you leave it?

A. I left because I was not treated right.

Q. Then you left of your own accord?

A. Yes, sir. I received only thirty-five dollars there, and I had a position offered to me which paid me eighty dollars a month. I always look out for self-interest, and, therefore, thought it was better to get eighty dollars than thirty-five dollars.

Q. But in looking out for self-interest, which is a very commendable thing, can you state that you left there voluntarily, of your own motion?

A. I sent in my resignation.

Q. And that was your own motion?

A. Yes, sir; the duties of teacher were not only exacted of me, but there was no man there to sweep the room, and the students under my charge for three months were compelled to sweep up. I remonstrated against this several times.

Q. To whom?

A. To the gentlemen who had charge of the institution.

Q. Who was that?

A. Rev. Dr. White, pastor of St. Matthew's Institute.

Q. Who had the direct charge of that school?

A. I had the direct charge of the pupils.

Q. What business had Mr. Murphy there?

A. He was assistant teacher.

Q. Who was the principal teacher?

A. I considered myself the principal teacher, because I taught up stairs and he taught down stairs. [Laughter.] I had, too, the best and more advanced class of boys; he had the little boys with bare feet.

Q. Where was this position of $80 a month that was offered to you?

A. It was in the office of the Commissary General of Prisoners.

Q. Do you know by whose agency and instrumentality you obtained that appointment?

A. I do. By the agency of Mr. Shanklin, chief clerk of that office, on two letters of recommendation, one from Mr. White, and the other from Captain Batey, which I have in my possession.

Q. Where were you living at that time?

WITNESS. On the 9th of January, 1864?

Mr. BRADLEY. Yes, sir.

A. I was boarding at the house of Mrs. Handy, but had lodgings at the house of Mrs. Sly.

Q. You remained there how long?

A. I boarded at Mrs. Handy's until some time in the fall, when I went to board at 22 Pennsylvania avenue, at a house kept by a colored man named Purnell.

Q. Can you not fix it any nearer than that?

A. No, sir. I do not remember the date. Perhaps about September.

Q. How long did you remain at Mr. Purnell's?

A. I remained at Mr. Purnell's three or four months. I may have gone there in May or July. I do not remember exactly about going to Mr. Purnell's.

Q. You do not know how long you staid there?

A. I was boarding at Mr. Purnell's house until I came to board with Mrs. Surratt on the 1st of November, 1864.

Mr. BRADLEY. That is not answering my question.

A. I do not remember the number of months—whether one, two, or three. It was perhaps three months, and it may have been four.

Q. Then you went to board at Mrs. Surratt's?

A. Yes, sir.

Q. At St. Charles were you studying for the priesthood?

A. I was.

Q. And from that time to this have you kept up your connection with the church?

A. I have kept up my connection with the church, but not as a student for the ministry.

Mr. BRADLEY. I did not ask about the ministry, but your connection with the church.

A. I have.

Q. You lived at Mrs. Surratt's how long?

A. From the 1st November, 1864, until 14th of April, 1865.

Mr. BRADLEY. That is five months and a half. During that time had you opportunities of observing her life and conduct?

A. I had.

Q. Now state whether it was or not exemplary as a Christian woman.

Mr. PIERREPONT. I object.

Mr. BRADLEY. I mean to put her character in issue.

Mr. PIERREPONT. Undoubtedly; but this is not the time.

Mr. BRADLEY. The gentlemen on the other side have assailed her character in the worst possible manner.

Mr. PIERREPONT. I submit, your honor, that there is no difficulty about putting her character in issue at the proper time, but that it cannot be done on cross-examination.

Mr. BRADLEY. I want to show what her whole life was during the time that this man has been detailing incidents of it, and——

Mr. PIERREPONT. I have not the slightest objection to his bringing all the church, all the laymen, and everybody else to whom your honor may be willing to listen, to prove what her character was as far as they can speak from their own knowledge, but I object to its being done on the cross-examination of a witness. They cannot use a witness on cross-examination for the purpose of supporting character.

Mr. BRADLEY. I do not expect to support her character by this witness. I wish to test this witness's observation and memory of it.

The COURT. I do not see, Mr. Bradley, that the evidence proposed to be given is at all responsive to anything brought out on the cross-examination. It is competent to prove character, but in doing so you make the witness your own.

Mr. BRADLEY. Your honor then rules, that when the prosecution have shown that during a particular portion of the time this witness was stopping at her house—that is, on Sunday—she visited one church regularly; and that during a certain portion of the services of the Catholic church, she habitually attended another church, I may not inquire into her character?

The COURT. O, yes; you can inquire into everything that has been gone into in the examination in chief.

Mr. PIERREPONT. Certainly; we have no objection.

The COURT. If anything has been said in that direct examination about her attending church, you may question the witness in regard to it on the cross-examination.

Mr. PIERREPONT. To which we shall certainly not object.

Mr. BRADLEY. I understand the question I put has been ruled out by your honor?

The COURT. Yes, sir.

Mr. BRADLEY. I desire to have an exception reserved.

Q. State what, during the whole time of your stay there, her deportment was towards you personally.

A. She treated me just as kindly as I treated her.

Q. I asked what her deportment towards you was?

A. She treated me kindly.

Q. Had you not, in her house, the freedom of a son almost?

A. Yes, sir.

Q. Were you sick at any time during your stay there?

A. I was sick for a short time one night.

Q. Were you not nursed and attended as though you were her son?

A. Yes, sir.

Q. You have spoken of the visitors to her house—Booth, Atzerodt, Payne, and Herold; did you not see respectable citizens visiting there also?

A. I did.

Q. Many?

A. Yes, sir.

Q. Can you recollect the names of any who were there frequently?

A. I would not like to state who were there. Perhaps those gentlemen might object.

Q. I call upon you to state who were frequent visitors at her house besides those you have enumerated on your examination here.

A. Father Wiget was a very frequent visitor, as was also her brother.

Q. Who else?

A. Sometimes one or two sisters of charity, Mrs. Kirby and Mrs. Dean. Those are about all I remember.

Q. You do not remember any other gentlemen visiting that house in the five months you were there except the two you have mentioned, exclusive of those referred to in your examination in chief?

A. No, sir.

Q. Do you mean to say there were none others there, so far as you know?

A. So far as I know; that is, to the best of my recollection. If you were to call any others to my attention I could tell whether they used to come there or not.

Q. I want to test your memory, and do not want to call your attention to anything. On the night of the 13th of March, 1865, where were you?

A. I was in Mrs. Surratt's house, in the parlor.

Q. Who else was there?

A. Mrs. Surratt, Miss Anna Surratt, and Miss Fitzpatrick.

Q. Who else besides members of the family?

A. Mrs. Hollahan.

Q. She was a member of the family, was she not?

A. She was boarding in the house, but she was not a member of the family.

Q. All those you have mentioned were inmates of the house, were they not?

A. Yes, sir.

Q. You say there was no one else there that night except the inmates of the house?

A. Not that I remember of now.

Q. Have you any distinct memory about it?

A. I have a very distinct memory that there was no one else there. Some one else came in for a short time.

Q. Who was that?

A. Payne.

Q. That was on the evening of the 13th of March, 1865?

A. Yes, sir.

Q. He was the only one there other than those who were inmates of the house?

A. He was the only one that I remember of.

Q. How do you fix that date of the 13th of March?

A. By the fact that it was two evenings before the 15th of March that Payne came.

Q. How do you remember the 15th of March?

A. I remember that by the play at the theatre on that occasion, "Jane Shore."

Q. On the 15th of March "Jane Shore" was played?

A. Yes, sir.

Q. Who played any prominent character in it?

A. I do not know. I was not at the theatre that evening.

Q. How do you know, then, whether it was played or not?

A. John Surratt told me it was played.

Q. When did he tell you?

A. A few days afterwards; Little Miss Dean told me, also. She described the costumes, &c.

Q. Who was at Mrs. Surratt's house on the 18th of March?

A. That I do not know, because I was out that evening.

Q. Who was there before you went out?

A. Surratt was there.

Mr. BRADLEY. I do not speak of the inmates of the house.

A. I do not remember of any others.

Q. Where were you that night?

A. Surratt and I were at the theatre.

Q. What was the play?

A. The "Apostate."

Q. Who played in it?

A. Booth and John McCullough.

Q. Were you examined as a witness before the commission who tried the alleged conspirators?

A. I was.

Q. Did you or not fix a different night then for the performance of that play?

A. I did.

Q. Did you or not afterwards see the affidavit of John McCullough swearing that he was not here at that time, and did not play then?

A. No, sir; I did not see the affidavit of John McCullough, swearing that he was not here on the 18th of March. I did see the affidavit of Mr. McCullough swearing that he was not here on the 2d of April.

Q. Did you not fix that period?

A. Which? I did not say the 18th.

Q. Was not the day fixed by you then as the time when John McCullough played here, a day other than the 18th of March?

A. I said, as well as I could remember, before the commission, that it was the 26th of March. I now state it was the 18th of March. I was mistaken not as to the fact, but merely as to the time?

Q. Did you, before that commission, swear you were introduced to John McCullough, in the city of Washington, on the 2d of April?

A. I did.

Q. Was that true?

A. No, sir.

Q. Did not you see the affidavit of John McCullough, stating that he was not here on the 2d of April?

A. I did.

Q. Did not you see the affidavit stating that he did not know you, and had never seen you?

A. Yes, sir; I saw that.

Q. Afterwards, did not you change the date of your introduction to John McCullough?

A. No, sir; I changed the date before I had seen John McCullough's affidavit.

Q. Where did you change it?

A. In my own mind.

Q. To whom did you declare that change?

A. I told Mr. Aiken, while evidence for the defence was being taken, that it was not the 2d of April, but the 26th of March. I am positive that I met John McCullough, and if necessary——

Q. When did you tell Mr. Aiken?

A. I told him while the evidence for the defence was being taken, after I had got through with my testimony. I was merely mistaken as to the time. If necessary, I could detail the conversation which I had with Mr. McCullough.

Mr. BRADLEY. I think Mr. McCullough is on the other side of the mountains; at least we have tried to get him, but have not succeeded; so you will not detail that, if you please.

Q. Can you now fix with any degree of certainty the time when you were introduced to Dr. Mudd?

A. I was introduced to Dr. Mudd in the winter of 1864–'65. I could fix it

certainly, beyond a doubt, by going to the National Hotel and seeing at what time Booth occupied room 84.

Q. Is there any other means?

A. Not that I remember just now.

Q. When asked that question upon the trial before, did you state any other means by which you could fix it?

A. I stated that it could be fixed by means of the register at the Pennsylvania House.

Q. Did you go to the Pennsylvania House to look for that register?

A. I did not—not to the Pennsylvania House.

Q. Not the house down on C street?

A. No, sir. I never saw the register of the Pennsylvania House, except on one occasion, several months before the trial, when I went there to look for a friend.

Q. Did you not see it during the trial of the assassins?

A. No, sir.

Q. Did you not fix the date as the 15th of January, or about that time?

A. I said about the 15th of January.

Q. That was in the month of June you testified?

A. I testified in the month of April.

Q. You testified before that commission in the month of April?

A. No, sir; in the month of May, I should say.

Q. And then your recollection was that it was the fifteenth of January that you saw Dr. Mudd?

A. To the best of my recollection, from circumstances. I was sorry I did not go to the National Hotel to see the room.

Q. What is your recollection now?

A. My recollection is that it was in the winter of 1864–'65.

Q. That is as near as you can come to it?

A. I will fix it positively by saying that it was room 84.

Mr. BRADLEY. I am speaking now of the time you saw Dr. Mudd, when you went to the Pennsylvania House with him?

A. I fix it also by another circumstance—by the fact of Surratt being employed by the Adams Express Company a short time after this introduction. That fact has occurred to me within the past two years. Had that fact come to my mind in 1865 I would have stated it.

Q. Have you not been to the office of the Adams Express Company to ascertain when that employment was?

A. I have.

Q. Didn't you ascertain that it was in the latter part of December, and not in January?

A. The man told me that it was on the 31st of December. He did not say anything about January.

Q. You say that Surratt was employed shortly after the introduction to Mudd and Booth?

A. Yes, sir.

Q. Then you must have been introduced to Mudd and Booth before the 31st of December?

A. Yes, sir.

Q. Yet on the trial of the conspirators you swear that it was about the 15th of January?

A. I did.

Q. Now what, since that, has enabled you to change the date of the performance of McCullough and Booth at the theatre, and the day of your interview with Booth and Mudd?

A. I will answer any one of those questions singly.

Q. First, what enables you to fix the change in the date?

A. I changed the date before I ever saw John McCullough's affidavit.

Q. I asked you what enabled you to change the date?

A. The fact that it was not Booth who called on the 2d of April, but Atzerodt. I know that Booth had called at Mrs. Surratt's house a week previous to Atzerodt's arrival.

Q. Do you know a gentleman named Ford, proprietor of Ford's theatre?

A. I do.

Q. Did you or not, very shortly after you had given that testimony at the conspiracy trials, have a conversation with him as to the time when Booth and McCullough performed at the theatre.

WITNESS. At what time? They performed often.

Mr. BRADLEY. I mean when the "Apostate" was performed in March, 1865?

A. Not that I remember. Mr. Ewing was the first one who called my attention to the fact that the "Apostate" was performed on the 18th of March.

Q. But what you said to Mr. Ford, and what Mr. Ford said to you, you do not remember?

A. I do not.

Q. Do you know Mr. Ford?

A. Slightly.

Q. Were you not imprisoned with him at the same time in Carroll prison?

A. I was at Carroll prison for 30 days; but not in the same room.

Q. You saw him daily?

A. Almost daily?

Q. Didn't you ride up and down with him to the trial of the conspirators?

A. I did.

Q. You conversed on this subject with him?

A. Sometimes I did, and sometimes I did not.

Q. Did not you talk about this very time—talk about the performance of "Pescara," in the play of the "Apostate?"

A. I do not remember.

Q. Didn't he tell you then that you were mistaken as to the time when "Pescara" was performed?

A. No, sir; I do not remember that.

Q. You do remember that you had conversations with him?

A. I do.

Q. What enables you to fix the change in the date as to the time when Dr. Mudd was at the Pennsylvania House?

A. The fact of his employment by the Adams Express Company.

Q. Then you know that John Surratt was employed the by Adams Express Company after you had been introduced to Dr. Mudd and Booth?

A. Yes, sir.

Q. You know that?

A. Yes, sir; I know that John Surratt was in the employ of the Adams Express Company one holiday, and that he wanted leave of absence for the holiday, but did not get it.

Mr. BRADLEY. You have told us all about that—about his taking French leave.

A. This is a different circumstance.

Q. I want to know how you fix the fact that John Surratt was employed by the Adams Express Company after you were introduced to Mudd and Boot h?

Mr. PIERREPONT. He proposes to give the other circumstance.

Mr. BRADLEY. O, well, let him give it. I want everything to come out.

WITNESS. I will answer your question by saying, merely because on one of the holidays at that time, a Sunday, or some other day, perhaps New Year's,

Surratt was at work all day in the office. I know it was a holiday because we had turkey for dinner. [Laughter.]

Q. Then you know that was after your introduction to Booth and Mudd?

A. Yes, sir.

Q. Then that must have been in December?

A. Yes, sir.

Q. How long before John Surratt was employed by the Adams Express Company was it you had that introduction?

A. Several days.

Q. A week?

A. Perhaps about a week or ten days.

Q. Are you aware that proof was given on that trial that Dr. Mudd was not here at the time you named?

A. Dr. Mudd himself has admitted that what I said about him was true.

Mr. BRADLEY. I am not asking you what Dr. Mudd admitted. Are you aware that on that trial proof was given that Dr. Mudd was not here at the time you fixed him here?

A. I have read Mr. Bingham's argument.

Mr. BRADLEY. I am not asking you as to whether you have read Mr. Bingham's argument or not. I repeat my question: "Are you aware that on that trial proof was given that Dr. Mudd was not here at the time you fixed him here?"

A. I am.

Q. When was the time, according to the time fixed by the evidence or the arguments on that trial?

A. One of the times fixed was that he was here on the 22d of December, 1864.

Q. Yet you on that trial swore that he was here about the 15th of January?

A. To the best of my recollection. Another circumstance which comes to my mind as fixing the introduction in the latter part of December, 1864, is that Surratt went to Port Tobacco in the early part of January, 1865. It has impressed my mind, and I am positive that the introduction to Mudd and Booth was before this ride to Port Tobacco, which was in the early part of 1865.

Q. Hadn't you thought over all these circumstances before you were examined here yesterday?

A. I have thought over them for the last two years.

Mr. BRADLEY. That will do for the present.

The COURT. Have you concluded the cross-examination of the witness?

Mr. BRADLEY. O, no, sir.

Q. You say that "Jane Shore" was performed on the 15th of March.

A. Yes, sir.

Q. I will ask you if you gave that same date on the conspiracy trial?

A. I fixed it finally for Mr. Cox. I said "Jane Shore" was played on the 15th, as well as I could remember.

Q. After having given your testimony in chief in that case, or just before, do you remember a conversation with Mr. Ford, or any one else, on the way from Carroll prison to the place of trial, in which you asked what night "Jane Shore" was acted?

A. No, sir; I do not remember. I asked that fact of a Mr. Lewis Carland, who was an actor at Mr. Ford's theatre.

Q. An actor was he?

A. Yes, sir. (After a moment's reflection:) No, he was not an actor, but he was employed at Ford's theatre. I believe he was costumer.

Q. When and where did you ask him?

A. I asked him down at the conspiracy trials.

Q. Then did he tell you?

A. Yes, sir.

Q. Did you swear according to what he told you, or according to your recollection?

A. I swore according to my recollection. He corroborated my recollection.

Q. You say Mr. Carland agreed with you in your recollection as to the date of that night?

A. I do not say that he agreed. He corroborated my recollection.

Mr. BRADLEY. That he corroborated, which is agreeing, I take it.

Q. Where was that conversation with Carland?

A. Down at the conspiracy trial.

Q. Was it or not on the way from Carroll prison to the place where the trial was had?

A. No, sir; Carland was not confined in Carroll prison, but at the jail out here.

Q. Do you recollect going down to that conspiracy trial with John M. Lloyd?

A. Yes, sir; I believe he was along one day.

Q. Was anybody else with you?

A. Two soldiers with loaded muskets.

Q. Nobody else?

A. There may have been two or three other persons, whose names I cannot now recall.

Q. Was Mr. Ford with you?

A. I do not remember whether he was with us that particular day or not.

Q. You have testified here that when Mrs. Surratt was being driven by you in a buggy to Surrattsville, you met Lloyd in a buggy at a little village beyond the Eastern branch; that both carriages were stopped, and that Lloyd came up to the buggy which you were driving, and spoke to Mrs. Surratt in such a low tone that you could not hear what passed; I believe that is the substance of what you testified to?

A. Yes, sir.

Q. Did you, or not, at that time, look right into Lloyd's face while he was talking with Mrs. Surratt?

A. No, sir; I sat right up in the buggy, with my back against the back part of the buggy.

Q. You did not look into Lloyd's face?

A. No, sir, not at that precise moment, while he was conversing; I looked at him as he came from his carriage over to where we were, and he recognized me.

Q. On the way to the prison of which I have spoken, when Lloyd was with you, and somebody else, did you not ask Lloyd in what tone of voice Mrs. Surratt spoke to him at that time?

A. Not that I remember.

Q. You did not?

A. No, sir.

Q. Did not you tell him that you had testified that she had spoken in a whisper?

A. Yes, sir.

Q. What did he say?

A. He expressed astonishment.

Q. Is that all he said?

A. That is all I remember.

Q. Did not he say that if you swore to that you swore to a lie?

Mr. PIERREPONT. I submit to your honor whether this evidence is proper—what Mr. Lloyd said to him.

The COURT. You cannot ask the witness what Mr. Lloyd said.

Mr. BRADLEY. Cannot I do so for the purpose of testing his memory?

Mr. PIERREPONT. Mr. Lloyd has already testified here, and we can produce him again if necessary.

The COURT. You may ask the witness whether he did not say so and so to Mr. Lloyd, and then, when he has answered, if you wish to contradict him you can bring Mr. Lloyd.

Q. When you told Lloyd that she whispered to him, did you say anything else to him?

A. Not that I remember.

Q. Did you tell Lloyd that she whispered to him at that time?

A. I did not say so.

Q. Did you tell Lloyd, at that time, that you had sworn she whispered to him?

A. I told Lloyd that I had testified that, to the best of my knowledge and belief, she whispered to him. I did not hear that conversation.

Q. Did not you ask Lloyd to correct the testimony?

A. No, sir.

Mr. BRADLEY. It seems we cannot ask you what Lloyd said.

Mr. MERRICK. You can if the other side assent to it.

Q. You have stated here to-day, if I understand you correctly, that you left no clothes at Mrs. Surratt's after the 16th or 17th of April, whichever it was?

A. I left no clothes which were to be washed. On Sunday or Monday I took off a pair of dirty boots which I had, and left them in my room. When counsel for the prosecution asked me the question, I thought he meant clothes for the wash.

Mr. PIERREPONT. I asked about clothes for the wash, and nothing else.

Q. While you were in Carroll prison, did you not state in the presence of two other persons that the reason you had no clean clothes there, or was short of clean clothes, was that you had left your clothes at Mrs. Surratt's to go into the wash?

A. No, sir.

Q. You did not say that to Mr. Ford and Mr. Carland?

A. No, sir; not that I remember. I had been two weeks in Canada, and by the time I got back the clothes I had on were pretty dirty. I had clean clothes at Mrs. Surratt's house, but was not permitted to go and get them.

Q. Did you not state that you had left your clothes there to go into the wash?

A. No, sir. I always put my clothes out to wash by Monday.

Q. You say that Mr. Surratt went to New York and saw Mr. Booth. Give us the date of that visit.

A. In the early part of February, 1865.

Q. What date?

A. I do not remember the date. In the early part; between the 1st and 22d.

Mr. BRADLEY. There are only 28 or 29 days in February. Can't you fix the time any nearer than you have done?

A. I remember it was before the 22d.

Q. You cannot fix it any nearer than some time within twenty-one days?

A. I remember, too, it was in the early part of 1865 that Surratt went to New York, while a man by the name of Howell was in the house; and he was there in the early part of 1865.

Q. I ask you if you can fix the time when Surratt said he went to New York and said he saw Booth?

A. I cannot fix the date positively.

Q. Can you fix it within ten days?

A. No, sir. I merely remember that he went to New York, and that it was in the early part of February, 1865.

Q. You can't fix it within ten days?

A. No, sir.

Q. The first ten days of February?

A. No, sir. If there was any peculiar circumstance to recall it to my mind, I could recall it by that circumstance.

Q. Did he go to New York twice in the month of February?

A. Not to my knowledge.

Q. Did he go to New York once in the month of January and once in the month of February?

A. Not that I remember of.

Q. Don't you know he did not?

A. He told me that he went to New York, and to the best of my recollection he went to New York in the early part of February, 1865.

Q. Didn't he tell you what he went for?

A. No, sir.

Q. Don't you know what he went for?

A. No, sir.

Q. Didn't he tell you he went there to see a lady and to bring her back home with him, and did he not bring her back home with him?

A. A lady did come back with him.

Q. Did not he tell you that he went there for that purpose?

A. Not that I remember.

Q. Did not he tell you he was going, and when he came back did he not tell you, in the presence of others, that he had been to New York, and where he met that lady?

A. Not that I remember.

Q. You do not remember that?

A. No, sir; I do not remember that particular circumstance.

Q. Where was it he told you that he had seen Booth, and that Booth had an elegant house there?

A. In his own house.

Q. When?

A. After he got back.

Q. How long?

A. A few days.

Q. How many days?

A. That I do not know.

Q. Ten days or a week?

A. I do not know the day, hour, and minute of everything.

Mr. BRADLEY. You have testified to so many dates, and with such particularity, that I want to see how much you remember about others. It is not my suggestion; it is yours.

Q. At the same time that he told you he had been to New York, and had seen Booth, and that Booth lived in an elegant house, and so on, did he or not tell you then that he had brought a lady back with him?

A. He told me that he had brought a lady back with him.

Q. Did he not tell you that he went on after that lady to bring her on to Washington?

A. I do not remember; he may have said so.

Q. And you do not remember of his telling where he met her?

A. No, sir.

Q. Do you remember of his telling you that he met her on the ferry-boat?

A. Not that I remember.

Q. How long was he gone?

A. But a few days.

Q. What is a few days in your calendar?

A. Two or three days.

Q. Was it more than three days?

A. I do not think it was.

Q. Was it more than two days and nights?
A. About that.
Q. Was it more than one day and two nights?
A. That I do not remember.
Q. You do not remember, then, of his leaving here in the evening, going to New York, and coming back by the next night, and bringing this lady with him?
A. I remember his bringing a lady.
Q. What time in the day did she arrive?
A. In the afternoon.
Q. How long did she stay?
A. She did not come into the house at all; not that I saw.
Q. Which way did she go?
A. I was not inside; but Miss Anna Surratt told me——
Mr. BRADLEY. Never mind what she told you.
WITNESS. Then I can't state. I did not see her go away from the house at all.
Q. How did she come to the house?
A. That I do not remember.
Q. Where did you see her?
A. I did not see her on that occasion, but some time afterwards.
Q. On that occasion, when John Surratt went to New York and brought a lady back, you did not see her at all?
A. No, sir.
Q. Did she arrive in the afternoon?
A. Yes, sir.
Q. How do you know if you didn't see her at all?
A. Well, I know it from circumstances.
Q. In what way did John H. Surratt come to speak to you of meeting Booth at this elegant mansion in New York?
A. His sister asked him whether he had seen Booth when he was in New York, and he said "yes," and described the furniture in the house, &c.
Q. Did not he tell you?
A. He told me in the presence of his sister. He told it to both of us.
Q. I thought you said in your examination in chief that he told you he had been to New York and had seen Booth, and mentioned what an elegant house he had, and so on. Now you say he mentioned this to his sister?
A. He told me and he told her.
Q. Did you ask him anything about it?
A. No, sir. His sister put the question, I believe.
Q. You did not make any inquiry about it at all?
A. I may have done so.
Q. I want to know if, in your communication with any officer of the government, you have been told that if you did not testify to more than you had stated, they would hang you too?
A. No, sir. I will say just here that before the trial in 1865 I detailed my evidence to Mr. Stanton, and Mr. Pitman took it down in short-hand.
Mr. PIERREPONT. (To the witness.) Now you may stop. The question has been answered, but if your honor pleases it was an improper question, and I hope no more such will be asked. I do not suppose they can inquire of the witness what the officer of the government asked him.
The COURT. They may inquire of the witness whether he has not made to some officer of the government a different statement than that which he has made here in giving his testimony. I do not apprehend that they can go into every conversation that he has ever had during his lifetime with any and everybody.
Mr. PIERREPONT. I do not ask that this question be stricken out. I only ask that such questions be not continued by counsel.

Mr. BRADLEY. I now propose to ask the witness whether, in the presence of Mr. Maddox and others, an officer of the government did not tell him that, unless he testified to more than he had stated, they would hang him too.

Mr. PIERREPONT. I object.

The COURT. Is the question, unless he testified to more here than he had stated to somebody else?

Mr. PIERREPONT. I do not object if it relates to this trial. If it relates to evidence that was to have been given on some former trial, then, I conceive, the question is not a proper one.

Mr. BRADLEY. I do not know, sir, to what trial it relates. I expect to show, however, that this witness is testifying, and testifying here, under threats.

Mr. PIERREPONT. Testifying here under threats?

Mr. BRADLEY. Yes, sir.

Mr. PIERREPONT. Then I withdraw my objection.

Mr. BRADLEY. Now I will repeat the question: "I ask you if an officer of the government did not tell you that unless you testified to more than you had already stated they would hang you too?"

WITNESS. At this trial?

Mr. BRADLEY. I ask you if he did not in the presence of Mr. Maddox and some others?

A. I do not remember to have ever heard it. It is news to me. I never had any fear of hanging.

Q. Do you know Mr. John A. Bingham?

A. Yes, sir.

Q. Did any such thing pass from him to you?

Mr. PIERREPONT. I object.

The COURT. I thought you waived your objection?

Mr. PIERREPONT. I did in relation to the other; but now he brings in persons and asks if Mr. Bingham——

The COURT. Mr. Bingham was an officer of the government.

Mr. MERRICK. He is now.

Mr. PIERREPONT. I did not know it. He is a member of Congress.

Mr. BRADLEY. I thought he was conducting the preliminary examination of witnesses in this case.

Mr. PIERREPONT. I did not know it.

Mr. BRADLEY. We expect to show that he has been examining witnesses preliminary to the trial of this case.

Mr. PIERREPONT. I do not know what the counsel may expect to show. Whenever that question comes up, then will be the proper time to discuss it. But now, as I understand it, the question is as to what Mr. Bingham said in relation to some other trial.

Mr. BRADLEY. The question is asked the witness with regard to what was said to him in reference to his testimony. We do not say at what particular trial, for we may not know. We expect to find out what passed.

After some further discussion—

The COURT said: I ruled the other day that no inquiry could be made of a witness in reference to any promise made, or threat held out, to induce him to give or to withhold testimony before the military commission, but that evidence of any promise or threat held out to him to influence the character of the testimony to be given on this trial was proper, and would be allowed to go to the jury.

Mr. MERRICK. Suppose, you honor, those promises or threats were made with a view of affecting the testimony of witness with regard to John H. Surratt, would it be proper in that case to give evidence of them?

The COURT. Yes, sir; in reference to the trial of John H. Surratt for the murder of Abraham Lincoln.

Mr. MERRICK. Then, under that ruling of your honor, I submit we have a

right to the evidence, for John H. Surratt was included in the indictment under which the other parties were tried before the military commission.

The COURT. I do not know that.

Mr. PIERREPONT. He was not tried there.

Mr. MERRICK. Your honor knows it as a matter connected with the judicial history of the country.

The COURT. I know he was not on his trial there.

Mr. MERRICK. He was included in the indictment.

The COURT. You know, Mr. Merrick, as well as the court does, that that was no trial of John H. Surratt.

Mr. PIERREPONT. Gentlemen on the other side found out he was not on trial.

Mr. MERRICK. Not until after they had gotten together the testimony. They expected to have him before them when they were preparing the testimony.

The COURT. That court tried only such persons as they had before them; and it is a well known fact that John H. Surratt was not before them.

Mr. MERRICK. That is all very true, but the testimony was prepared with a view to all of them.

The DISTRICT ATTORNEY. He is not mentioned in the charges and specifications.

Mr. MERRICK. I beg your pardon, I think he is.

Mr. PIERREPONT. It does not make any difference whether he is or is not.

Mr. Bradley reserved an exception to the ruling of the court.

Q. Do you know George T. Jarboe?

A. I do not know that I can say I know George T. Jarboe, but I had the pleasure of being in the Old Capitol, or Carroll prison, and met there a man by the name of Jarboe. I do not know whether his name is "George T." or not. There were two Jarboes there, father and son.

Q. I think you stated here to-day that on the morning after the assassination of the President you went before the government officers?

A. Not exactly government officers; city government officers.

Mr. BRADLEY. You did, I believe, correct it, and said to Mr. Richards—that you went to Mr. Richards and made a disclosure of all you knew about it.

WITNESS. I did not see Mr. Richards that morning. I said I went to Mr. Richards's office, and saw two men who were employed by Mr. Richards, Messrs. Clarvoe and McDevitt.

Mr. BRADLEY. I understood you to say that you went to Mr. Richards and made a disclosure of all you knew about it.

A. I did not say I made a disclosure of all I knew about it, because I knew nothing at all of the assassination. I had my suspicions, and stated substantially the facts, giving a description of John Surratt and Booth.

Q. While you were confined in Carroll prison did you tell Mr. Jarboe that the next morning, while you were going to your place of business, you were arrested by one of Baker's detectives, and carried before Mr. Stanton and several other officers.

A. That is perfect news to me.

Q. Your memory is very good about that?

A. I went to Mr. Richards's office.

Mr. BRADLEY. I am asking you in regard to what you stated to Mr. Jarboe, in Carroll prison.

A. I never said anything of the kind.

Q. Neither to him nor to any one else in prison?

A. No, sir. None of Baker's detectives ever arrested me.

Q. I want to know what you told Jarboe?

A. I have stated to you that the expression is perfectly new to me—like new music.

Q. Were you or not carried before Mr. Stanton?

A. I was not *carried* before Mr. Stanton.

Q. Did you go before Mr. Stanton in the custody of anybody?

A. No, sir.

Q. Who went with you?

A. On one Sunday morning, the 30th of April, as I was walking down the street very leisurely, smoking a cigar, I met Mr. Burnett. He invited me to his office and told me to be seated. He did not arrest me. He told me Mr. Stanton would like to see me. I did go before Mr. Stanton. That was the first and only time I ever had an interview with Edwin M. Stanton.

Q. You did not tell this young man in prison that when Baker's detectives had carried you before Secretary Stanton and several other officers, they of course asked you if you knew anything of the parties engaged in the plot to murder the President; and that you said, "I do not?"

A. I did not know whether these parties were or were not engaged in this conspiracy.

Q. I ask you if you did not tell Jarboe, and some one else in Carroll prison, that being taken before Mr. Stanton, and interrogated as to what you knew, if you knew anything of the parties engaged in the plot to murder the President, you did not say you did not know anything about it?

A. No, sir; I do not remember that.

Q. Do you say you did not tell them?

A. I gave Mr. Stanton all the information that was in my possession at that time.

Q. What did you tell the persons in prison in regard to it?

A. I do not remember of having said anything of the kind to Jarboe at all.

Q. Do you say you did not?

A. I say it is news to me.

Q. Is not your memory as distinct about that as anything else?

A. How can I tell? I say I do not remember to have said so.

Mr. BRADLEY. I have a right to an affirmative or a negative answer.

Mr. PIERREPONT. Yes, sir; if he can give one.

The COURT. If he says he cannot possibly remember, then, of course, there is an end of it. The counsel, however, has the right to test his memory on the point, and to endeavor, if possible, to get a positive answer.

Mr. BRADLEY. I will repeat the question.

Q. Can you state whether you did or did not state what I have repeated, to the parties mentioned?

A. I do not remember to have said so. To the best of my recollection I did not say so. I never heard of it until to-day.

By a JUROR. Who is Mr. Burnett?

A. He was the assistant judge advocate on the trial. He was conducting the preliminary examination.

Q. Did you tell Mr. Jarboe, or any one else there, that you thought something was going on, because you met so many rebels at Mrs. Surratt's house?

A. I do not remember that conversation.

Q. Did you tell him that you wanted to go south, and could not go, because John Surratt could not get you employment there?

A. No, sir; I did not. All these things astonish me. I never heard of them before.

Q. That John Surratt could not make any arrangement to get you across the river?

A. I never asked John Surratt to get me across the river.

Q. Did you not tell Jarboe, and these other people that you did; that you could not go because he could not make an arrangement to get you across the river?

A. No, sir.

Q. What was your position under the government?

A. I was a clerk in the office of the Commissary General of Prisoners, a branch office of the War Department.

Q. Did that bring you into such a position that you could see what the movements of the armies were?

A. No, sir.

Q. Did you or not from time to time take some trouble to ascertain the movements of the army, and what was going on in the operations of war?

A. No, sir. The bureau I was in had charge of specific matters appertaining to prisoners. I had charge of the funds of rebel prisoners of war.

Q. Did you have charge in that bureau also of the business that related to the locality where the prisoners were, and the number of prisoners at each point?

A. The names of the various prisons were kept in a book, but not the names of the different prisoners.

Q. Was the number of prisoners in each prison kept there?

A. No, sir.

Q. Had you access to the number of prisoners in each prison?

A. No, sir. I could only arrive at an approximate idea of the number of prisoners by calculating in this way: By finding so many thousand prisoners to have received so many thousand rations a month, and then proceed to add or multiply as the case might be in order to ascertain the whole number of prisoners. It was at best, however, only an approximate estimate.

Q. Did you ever make an approximate estimate in that way?

A. I did for the office several times.

Q. Did you ever take any such estimate out of the office with you?

A. No, sir.

Q. Did you ever furnish information to anybody outside of the office of the movements of the army?

A. I did not know them myself. I was not in a position to give that information.

Q. I ask if you ever furnished it?

A. No, sir.

Q. You never furnished to any person whom you met at Mrs. Surratt's house information in regard to the movements of the army, the force in the field, the locality of prisoners, or the number of prisoners?

A. I said something to Howell on the subject, when he was reading one evening from the Evening Star the number of rebel prisoners. The number of rebel prisoners being exchanged was mentioned in the Star from time to time, and on this occasion he was reading what was published.

Q. What Howell is that?

A. Howell was a blockade runner, introduced to me by John H. Surratt.

Q. And that is the only time at Mrs. Surratt's house that you ever furnished information, or stated anything in regard to the number of prisoners at any one point, or where the locality was, or of the movements of the army?

Mr. PIERREPONT. I object to the question as irrelevant.

The COURT. I cannot at the present time see the relevancy of it.

Mr. PIERREPONT. I object to it, unless counsel can show how it is at all relevant.

Mr. BRADLEY. I think, before we are done, the gentleman will see that it has some relevancy.

Mr. PIERREPONT. If you say we will, I will withdraw my objection.

The COURT. Counsel will proceed with the examination.

WITNESS. I could state precisely the amount of business that John Surratt ever did at our office.

Mr. BRADLEY. I don't want you to state anything more than what I ask you

to state. I will ask you questions on such points as I desire information upon, and you can go to counsel on the other side for anything else. I will ask you a question, however, in regard to that; whether you did not during the recess go to counsel and suggest a further examination as to matters upon which you had been examined.

A. No, sir.

Q. You did not tell them they had omitted to ask you about some things?

A. Yes, sir; but I did not suggest anything.

Q. When you were brought back to the stand were you not interrogated in regard to the very matters to which you had called the attention of counsel?

A. Yes, sir.

Q. You told us yesterday, I believe, that you reside in Philadelphia?

A. Yes, sir.

Q. What are you engaged in?

A. Nothing now.

Q. What have you been engaged in lately?

A. The custom-house, Philadelphia.

Q. When did you leave it?

A. Last fall.

Q. Under what circumstances?

A. I was told I was not wanted any longer; that I had voted the radical republican ticket.

Q. Is that all?

A. That is all I remember.

Q. You say now that all that was alleged against you, and which led to your resignation, dismissal, or whatever it was, was that you voted the radical republican ticket?

A. I don't care what was alleged against me; that is none of my business.

Mr. BRADLEY. I asked what was alleged against you as the cause of your removal from office; now I ask you if you were not removed from that office for opening drawers with keys without authority?

A. I did not know that I was. I have heard of that thing before. I was employed in a room where I had access to everything; I was a clerk in that room, and it was my duty to have access to everything.

Q. Was it your duty to open drawers to which you had not the proper keys?

A. I was privileged at any time to go either——

Q. Was that not one of the grounds, if not the ground, upon which you were removed from office?

A. I do not know that it was.

Q. Was that not stated to you?

A. No, sir.

Q. Who is the collector there?

A. William F. Johnson was collector at that time.

Q. Who is the principal clerk in charge of the branch office where you were?

A. Mr. Berchey.

The court here took a recess until to-morrow at 10 o'clock a. m.

SATURDAY, *June* 29, 1867.

The court met at 10 a. m.

Cross-examination of LOUIS J. WEICHMANN continued:

By Mr. BRADLEY:

Q. I asked you yesterday to fix as accurately as you could the date of your introduction to Dr. Mudd and Booth. If I understand you correctly, it was as early as the 22d of December, 1864?

A. I did not fix the 22d of December; I fixed the time as being before the time when Surratt was employed by the Adams Express Company, or as being be-

fore his visit to Port Tobacco, which was early in January, 1865. These two circumstances were not in my memory at the time of the trial of the assassins; if they had been, I might have fixed the dates more positively.

Q. Can you state whether it was before or after Surratt went with the Adams Express Company?

A. I am not positive about that; I think it was before he went there; I am positive as to the room Booth occupied at that time——

Q. I ask you to confine yourself to the question I put. On your examination before the military commission, did you not state that you made your first acquaintance with Dr. Mudd about the 15th of January, 1865?

A. I said so yesterday—that was the best of my recollection at that time. If the government had permitted me to see the register of the National Hotel to identify the room I could have fixed it positively.

Q. Did you not state that you were sure it was after the 1st of January?

A. As far as my recollection went at that time, I did.

Q. In answer to the question, "Why are you sure?" did you not say "From a letter I received at that time—about the 16th of January—and from a visit to Baltimore, and certain events which took place about that time"?

A. I said that, sir. I have that letter in my possession. I find that the letter that I received was of a later date, the 19th of January, 1865, which called me to Baltimore.

Q. In what way is that letter or that date connected with your first introduction to Dr. Mudd and Mr. Booth?

A. Merely because at the time of the trial of the assassins I was impressed that I received this letter about the same time.

Q. Is that still your impression?

A. No, sir. The letter I received on the 19th of January called me to Baltimore.

Q. Then when you were examined, if I am correct as to the date, on the 12th of May, less than a month after the assassination, and at that time you fixed this first acquaintance about the middle of January; now, after a lapse of two years, what has passed that enables you to fix it with greater certainty?

A. I have seen nothing except the room at the National Hotel. I made it my business to go to that room to find out positively about what I was testifying.

Q. Have you found out by the date at which Booth registered himself at the National Hotel?

A. I looked for Booth's name and found it had been cut out.

Q. My question is, did you find out by looking at the National Hotel register when that room was occupied by Booth?

A. I looked at the National Hotel register of the 22d of December, 1864, and Booth's name was not there. I went to the room before I looked at the register.

Q. I am not asking you about the room. You will please answer my question.

A. I knew that room was assigned to him on the 22d of December before the trial of the assassins, because the date is in the book there.

Q. The 15th of January?

A. No, sir. The 22d of December, 1864.

Q. Have you ascertained from the National Hotel register, or otherwise, when Booth left or gave up room 84?

A. No, sir.

Q. You have not ascertained from that book how long he occupied it?

A. No, sir, because Booth's name does not appear on the National Hotel register at all.

Q. Was it cut out before you looked at that book?

A. It was.

Q. Who cut it out?

A. That I do not know.

Q. You do not know, then, at all that that room was assigned to Booth, except from the fact that you saw him in it?

A. By that, and I know by reading the testimony on the trial of the assassins.

Q. I am not asking you about the testimony on that trial; I am asking you now about what you saw at the National Hotel.

A. I do not know, from my own knowledge, that Booth occupied room 84 on the 22d of December, 1864. I know that that interview was in that room 84.

Q. I want to ascertain from you, if I can—you who have spoken of so many dates—how you fix the date of that first introduction to Booth?

A. I have not fixed it positively.

Q. Can you fix it within ten days?

A. I fixed it within seven days yesterday. Yes, sir.

Q. I thought you fixed it within less than seven days?

A. Five or seven days.

Q. That was five or seven days after the 22d of December?

A. No; before Surratt's employment by the Adams Express Company.

Q. I ask you if you did not fix it after the 22d of December?

A. I fixed it within five or seven days of the employment of Surratt by the Adams Express Company.

Question repeated.

A. Not that I remember.

Q. Did you or not fix a day before Surratt went to the Adams Express office, or after he went there?

A. I said before.

Q. Did not you say on your examination before the military commission that it was during the recess of Congress?

A. I do not know positively whether Congress was in recess or not. The room had been previously occupied by a member of Congress. From what Booth said it was my impression that Congress was in session at that time.

Q. In your examination before the military commission did you not state that it was during the recess of Congress, and that the recess lasted only a week or ten days, or words to that effect, and did not you refer to the recess of Congress as a means of fixing the date when you were introduced to these parties?

A. The whole matter of that recess was this: Booth told me the room had been previously occupied by a congressman.

Q. I ask you whether you did not, on the trial of the conspirators, state the recess of Congress as one of the means of fixing the date of your introduction to these parties?

A. Yes, sir.

Q. You are certain that it was after the congressional holiday vacation?

A. Yes, sir.

Q. Do you recollect testifying that?

A. To the best of my knowledge, I was certain at that time.

Q. Was this question and answer given on that trial: "Q. Have you any means of knowing that it was after Christmas? A. Merely by the fact of its being after the congressional holidays, and this member had not returned. The other congressmen had nearly all returned, and he was one whose return had been delayed for some time, it appears"?

A. Yes, sir. Booth told me that himself.

Q. Now, sir, do you not know that the congressional holidays occurred about the 22d of December and lasted about ten days?

A. It generally lasted about ten days or two weeks.

Q. Would that carry it down to the 15th of January?

A. No, sir.

Q. Could your introduction then have occurred within five or seven days after the 22d of December?

A. It might have been possible.

Q. Was it not important on that trial to fix your first introduction to Dr. Mudd about the middle of January?

A. I do not know whether it was or not. I testified to the best of my knowledge.

Q. Have you fixed it differently by connecting it with other circumstances?

A. No, sir. After I testified, I went with Colonel Burnett down to the National Hotel. I went to room 84 and at that time positively identified it as the one occupied by Booth on this occasion. I asked Colonel Burnett to recall me and allow me to state that room 84 was the one occupied by Booth on that occasion. He said it was not necessary.

Q. Did you not go down to the Pennsylvania Hotel to ascertain when Dr. Mudd was registered there?

WITNESS. With Colonel Burnett?

Mr. BRADLEY. I do not know. With Colonel Burnett or somebody.

A. No, sir.

Q. Or alone?

A. No, sir. On the evening of the 15th I went to the Pennsylvania House with Mr. Hollahan.

Q. I am not asking about the 15th at all. I am asking whether you did not go to that house to see when Dr. Mudd was registered?

A. I never looked at the register of the Pennsylvania House to see whether Dr. Mudd's name was registered there or not.

Q. You said you met Payne at Mrs. Surratt's. How often did you meet him there?

A. Twice, to the best of my recollection; I mean I met him on two occasions. When he was living in the house of course he was there regularly, and I saw him at breakfast and at dinner; he was treated like any member of the family; when, therefore, I say I met him twice I mean on two different occasions.

Q. Can you fix the date when he first came?

A. I never did fix the date and cannot now; it was in the latter part of February, 1865.

Q. On your examination before the military commission, in your answer to that question, did you or not say that it was about eight weeks before the assassination?

A. Yes; and I do say that it would be nearly eight weeks, as near as I can remember.

Q. Now state as well as you can recollect, after you had received Payne at the door what passed down to his seeing Mrs. Surratt.

A. I went to the door; I met a man there with black hair and black eyes; I did not ask him what his name was; he said, "Is Mr. Surratt at home?" I said he was not; he said, "Is Mrs. Surratt at home?" I said she was; he expressed a desire to see Mrs. Surratt; I went into the parlor and said to Mrs. Surratt that a gentleman by the name of Wood was at the door, and would like to see her; she requested me to bring him in and introduce him.

Q. Did you state on your examination before the military commission, after you had said Mr. Surratt was not at home, that you said Mrs. Surratt was at home, and you would introduce him to the family if he desired it?

A. He did desire it.

Q. I ask you if you did not say you would introduce him to the family if he desired it?

A. He expressed the desire before I said I would introduce him.

Question repeated.

A. Yes, sir.

Q. But you say that he expressed a desire before you said you would introduce him?

A. Yes, sir; because I would have politeness enough about me not to introduce a perfect stranger to Mrs. Surratt or any other lady without first asking her consent. Etiquette would teach me that.

Q. I do not know the rules of etiquette; but when you stated that when a gentleman inquired for Mrs. Surratt you said you would introduce him to the family if he desired it, I took it for granted that you stated that before he said he desired it.

A. No, sir; I said I did not.

Q. He expressed a desire to see Mrs. Surratt?

A. Yes, sir.

Q. He had expressed a desire to see Mrs. Surratt before you had told him you would introduce him?

A. Yes, sir.

Q. And furthermore he first gave his name as Wood; is that so?

A. He had given his name as Wood.

Q. I will thank you further to state whether on that trial you did or did not say that Mrs. Surratt received him and spoke to him as an old acquaintance?

WITNESS. At the first visit?

Mr. BRADLEY. I ask you whether these interrogatories were put and the answers given as here written down: "Q. You say that Payne paid a visit to the Surratts, and stopped only over night during his first visit? A. Yes, sir. Q. With whom did he seem to have business? A. He inquired for Mr. Surratt; his business appeared to be with Mr. Surratt. On the occasion of his first visit I was in the parlor during the whole time. Q. He did not appear to have anything to say to Mrs. Surratt? A. He asked Mrs. Surratt to play on the piano for him, and he raised the piano cover."

A. I did not say Mrs. Surratt, I said Miss Surratt; Mrs. Surratt did not play.

Q. Was there any effort there to conceal something?

A. He had no false disguise the first occasion.

Q. Have you described his having the moustache on the second visit?

A. Yes, sir; I said I found a false moustache.

Q. I am not asking what you found in your room—I ask whether any of these three days he wore a false moustache?

A. No, sir.

Q. Then he had no disguise? (Reading from report of military commission: "Q. Was he treated by Mr. Surratt as an intimate friend? A. He appeared to be treated kindly by Mr. Surratt, as if he was an old acquaintance. On the occasion of his second visit to the house Mr. Surratt, when meeting him, recognized him as though he had known him.") Do you recollect what you stated as to when Payne came the second time, on the trial of the conspirators; how long after the first visit?

A. I did not fix it at first precisely; I said it was after the fourth of March; that he expressed some regret at not being here the fourth of March. Afterwards I fixed, I believe, the thirteenth of March as the evening he came, and I said he was there about three days.

Q. Did not you state that he came about three weeks after his first visit?

A. If you will take the latter part of February for his first visit you will have just about three weeks by the thirteenth of March.

Question repeated.

A. I did, I believe.

Q. On this trial do you recollect what day you stated he came?

A. I stated he came on the evening of the thirteenth of March.

Q. Now, will you state how you fix that date?

A. As being the second evening before the fifteenth; I said so yesterday.

Q. How did you fix the fifteenth?

A. By the play of Jane Shore, which occurred at that time.

Q. Were you not under the impression, and did you not swear at the conspiracy trial, that Jane Shore was played a different night?

A. I do not recollect.

Q. Did not you ask Carlin, and learn from him?

A. I said yesterday I asked Carlin, but the 15th of March was in my mind before I asked him.

Q. Did you tell the commission then that Payne's second visit was two days before the performance of Jane Shore?

A. It was two days before.

Q. Did you tell them that?

A. I do not remember.

Q. On the former trial of the conspirators, did you state at what time Surratt returned, after Payne's second visit?

A. No, sir; not to my knowledge.

Q. Did you state that on the occasion of his second visit Mr. Surratt met him, and recognized him, as though he had known him?

A. I do not remember that I stated so. Surratt was in bed at the time he came.

Q. Did you state, on the occasion of his second visit to the house, Mr. Surratt, when meeting him, recognized him as though he had known him?

WITNESS. Do I state that there?

Mr. BRADLEY. I do not know. I read from a report of the trial.

A. It seems to me, I did; yes, sir.

Q. On this occasion, did you not state that the following day, that is, the day after Payne's arrival, "Surratt had come back; I was sitting writing; Payne came in and asked, was that Surratt; I said yes. Then Payne said he wanted to see Surratt in private?"

A. I said that; but there was a sort of recognition between the two; I believe that Surratt knew Payne before he ever came to the house.

Q. I do not ask you for your belief; at present confine yourself to your answers to the questions put, if you please. Do you recollect your statement of the finding of that moustache, when you were examined before that commission? I merely read to you now for the purpose of refreshing your memory:

"Did you observe any traces of disguise about him, or attempted preparations for disguise?

"A. I would say, that one day, returning from my office, I found a false moustache on the table in my room. I took the moustache, and threw it into a little toilet-box I had on the table. This man Payne searched around the table, and inquired for his moustache. I was sitting on the chair, and did not say anything. I have retained the moustache since, and it was found in my baggage; it was among a box of paints that I had in my trunk."

A. Yes, sir; I made that statement.

Q. Have you stated here that Payne made any inquiry about that moustache?

A. No, sir; at the time when I found the false moustache of Payne's up stairs in the third story room, when Payne inquired for the moustache, I do not recollect whether it was before dinner or after; I was sitting in my room. He felt round for it. I did not think anything about that moustache.

Q. Did you state then that you put on the false moustache, with a pair of spectacles, and went to the office.

A. I did not state that; I said that I put on my glasses; that I had Payne's moustache with me, and that I put it on at the office.

Q. Did you state before the commission that you put them on at the office?

A. The following morning.

Q. Did you state that to the commission?

A. Yes, sir.

Q. Do you recollect whether that was on your direct examination, or on your cross-examination? I have looked for it, and have failed to find it.

A. It was on the cross-examination of Mr. Johnson; he brought that out. If you like, I will bring witnesses who saw me have it on.

Q. I am not asking you what you can prove, but about the testimony you gave at the trial of the conspirators. I find on your cross-examination, this:

"Q. What did you intend to do with it?

"A. I did not intend to do anything with it; I took it, and exhibited it to some of the clerks in the office the day afterward, and was fooling with it; I put on a pair of spectacles and the moustache, and was making fun of it."

Now, can you give any reason why you concealed that moustache from Payne when he was inquiring for it—why you kept it, and keep it to this time, as I understand?

A. I did not think much about it, at all. I merely intended to have a little fun about it.

Q. But you did not return it afterward.

A. No, sir; he did not ask for it afterward.

Q. Were there any suspicions aroused in your mind by finding that moustache?

A. No, not at that time; I had no particular suspicions. I thought it rather queer that a Baptist minister should wear a false moustache. I said that, and say now that it did look queer; but I did not know that it was intended to be used for anything.

Q. Then your only purpose in taking charge of it was a little fun and mischief?

A. That was all.

Q. And you have kept it ever since?

A. O, no; I have not. The War Department has got it now.

Q. Did not you on that trial say, "I thought it rather queer that a Baptist preacher should use a moustache; I did not care about having false moustaches lying around on my table"?

A. I said that.

Q. Was that your particular reason for not returning it?

A. O, no; if he had asked for it the next day he would have got it.

Q. Was this your testimony on the conspiracy trial: "Did he not ask for the moustache? Yes, sir; he said where is my moustache." And again: "When he came home, as I understand you, he seemed to be feeling for something—said he had lost something—did he not ask for the moustache," to which you replied, "Yes, sir."

A. Yes; I know he asked for something; that was after dinner; after he came up into my room.

Q. You say he asked, "where is my moustache"?

A. He felt round with his hand for it.

Q. He felt round with his hand, and said, "where is my moustache"?

A. Yes; the box was open all the time—he could have seen it there.

Q. You were asked whether he had any preparations for disguise. Was he concealing that, or disguising it in any way?

A. It was lying on the table there.

Q. He asked for it, and called it his?

A. Yes, sir.

Q. How long had he been in the house then?

A. That was the second day—the fifteenth, I think.

Q. Did you meet except at meal times?

A. I met him in the morning before going to my office. I met him several times. I met him in my room, and I met him at dinner.

Q. And in the evening in the parlor?

A. Yes, sir; on one or two occasions.

Q. I mean before the finding of this moustache?

A. O, yes; I met him in the parlor on the evening of the 13th.

Q. Was it on the 14th when that moustache was lost?

A. I think it was the 15th—the same day they went to the theatre—the same day Payne borrowed my cloak.

Q. Speaking of that cloak—did you ever loan it to anybody else in the house?

A. I may have loaned it to Surratt.

Q. Have you not loaned it to Atzerodt?

A. No, sir.

Q. Positively?

A. Not that I remember. I am positive of that.

Q. Can't you speak positively about that?

A. I speak positively of that—I never loaned it to Atzerodt. Surratt, himself, borrowed it from Payne.

Q. You state distinctly that during the time Atzerodt visited this house you never loaned that cloak to him?

A. To the best of my knowledge I never loaned that cloak to Atzerodt.

Q. Did he ever wear your hat and cloak both?

A. Not that I remember. Now about that hat story—he did take my hat one day and put it on. My hat was very large. When he put it on it came down over his eyes, and Surratt and he had a good laugh over it. That is all about the hat story.

Q. That is positively all that occurred about the hat?

A. That is all about the hat story. Atzerodt wore a slouch hat—I wore a high hat. On another occasion, on the avenue, he took off my hat and cloak and put them on himself. I am willing to state everything that occurred.

Q. I do not ask you to volunteer anything at all. It will take us long time enough to get out what we want. You state that on one occasion, in coming by the post office, Surratt called for a letter addressed to James Sturdy, opened it and read it, and that the letter was signed Wood; when was that?

A That was before the 27th of March. I stated on the trial of the conspirators that it was about the 20th of March.

Q. I want you to fix it when it was.

A. It was before Payne returned, as I have said, on the 27th of March. I stated on the trial of the conspirators that it was about the 20th of March.

Q. You say Payne returned to this city on the 27th of March?

A. So I understood from an interview Surratt had at Mrs. Murray's house; I had that impression.

Q. When was it that Surratt got that letter at the post office?

A. I do not remember the date. I stated that it was about the 20th of March, and before the 27th.

Q. Is there any circumstance that recalls it to your mind?

A. The fact of its being before the 27th.

Q. When was it you saw Surratt and Payne fencing with bowie knives on the bed?

A. The 15th—the same day they went to the theatre.

Q. How long after that was it that this letter from James Sturdy was taken from the post office?

A. A few days.

Q. What do you mean by a few days?

A. Payne left Surratt's house on the 16th; Surratt said he had gone to Baltimore for a few days. After that I saw this letter signed Wood.

Q. What do you mean by a few days?

A. Well, say five or six days.

Q. On trial of the conspirators did you or not state that that letter was received some two weeks after the incident of the fencing with the bowie knives?

A. Yes; and I fixed the 20th of March.

Q. Did you not say, "Some two weeks after, Surratt, when passing the post office, went to the post office, and inquired for a letter that was sent to him under the name of James Sturdy, and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it?" What day was that?

A. It must have been about two weeks after that affair.

Q. The latter end of March?

A. Yes, sir; it must have been before the 20th of March. The letter was signed Wood.

Q. Now, if that fencing took place on the 15th of March, how could you make out that it was two weeks afterwards?

A. I was mistaken in the time at first, but I fixed the time, and I fixed the time of the horseback ride in front of Mrs. Surratt's house, the 20th of March. I think you will find I fixed it at that date.

Q. In regard to that horseback ride—did you state on the other trial, "I will state that as near as I can recollect it was after the 4th of March; it was the second time that Payne visited the house; I returned from my office one day at half past four o'clock," &c.?

A. Yes, sir.

Q. Then you gave an account of these parties coming to your room, and state, "Some two weeks after, Surratt went to the post office and got a letter addressed to James Sturdy;" did you state that?

A Yes; I afterwards fixed the date of that horseback ride, in answer to the question of Mr. Cox, on the 20th of March. You will find it in the second volume.

Q. Then you have examined carefully the testimony that you gave down there?

A. I have studied over it for the last two years. You do not suppose that such an incident as that is an every-day incident in my life, and that I have not been thinking of it.

Q. Is there anything else you have been doing? Have you been writing it down?

A. I have written it down. I have written about it frequently.

Q. Have you not within the last few months?

A. Yes; I have within the last few months.

Q. Have you not written out a very full statement within the last few months?

A. Yes, sir; I thought it was my duty.

Q. Have you not read over and studied that statement very carefully?

A. Yes, sir; I have read it over

Q. Have you not read it over more than once?

A. Yes, sir; I have read it over several times.

Q. Was not that written statement carefully prepared after you had studied your examination before the military commission, with the assistance of the report of that trial?

A. My written statement was not made out from the report you have. I then had Pitman's book. I referred to that book because I wanted to state the facts *seriatim*.

Q. After you made your written statement from Pitman's report, did you not examine those two volumes and correct your statement from them?

This examination objected to by Mr. Pierrepont as not in the nature of a cross-examination, and improper.

Mr. BRADLEY said he hoped he should not be suspected of getting in anything illegitimate. It was perfectly competent to ask the witness whether he had not prepared his evidence.

Objection overruled.

Q. You will now answer the question whether you made or had prepared a written statement of what you knew, or what you could testify to in this case, or whether you did not have two volumes of the Boston report, and did not revise your statement by that report.

A. No, sir; I do not recollect.

Q. Do you deny that you did not make or have made a written statement, and correct that written statement after going over these two volumes?

A. I do not believe I did.

Q. Have you not done it within the four months past?

A. I have not had these two volumes until within the last two weeks.

Q. I do not care abou tthat. I ask you to answer the question. I ask you again, if you did not prepare a written statement before you went before the grand jury in this case.

A. I wrote out a statement two years ago.

Q. Did you not write out a statement after Surratt was captured, and have that written statement in your possession at the time you were examined before the grand jury?

A. Not that I remember.

Q. Where was it?

A. I left it with the assistant district attorney.

Q. Did not you present it to the grand jury?

Question objected to by the district attorney. It was not proper to disclose what took place before the grand jury.

Mr. BRADLEY said a witness could be asked what he swore to before the grand jury; whether a grand juror could be called to contradict him was another question.

The COURT ruled that witness could be asked whether he made a written statement.

WITNESS. I had a written statement with me in the city at that time, but I think I left it with the assistant district attorney. I did not read that statement to the grand jury, and to the best of my knowledge I did not have it with me.

Q. Did you not see that statement lying on the table before the grand jury?

A. No, sir; if it was there it is news to me.

Mr. BRADLEY said he would not at this time, in the condition of health of the court, argue the question as to the propriety of asking the witness whether he did not testify from a written statement before the grand jury.

The COURT stated that there was no secrecy enjoined upon witnesses before the grand jury, and in his judgment a communication made to them would not be privileged.

The DISTRICT ATTORNEY believed it was not proper to require a witness to disclose his testimony before the grand inquest, and desired to present authorities to that point before the question should be definitely decided.

Mr. BRADLEY said that rather than have an argument in the condition of the health of the court, he would waive the question.

Q. I now ask you whether, at the time of your examination before the grand jury, there was not a copy of your written statement lying on the table of the clerk of the grand jury?

A. Not to my knowledge.

Q. And can you state whether you were or not examined from a parcel of

papers lying before them, and which were turned over in the progress of your examination?

A. This is all news to me; I never heard of such a thing before.

Mr. PIERREPONT said he understood the examination on this point was not to be pressed.

Mr BRADLEY said he would not press it further.

Q I now come down to Atzerodt, and want to know when you first met him?

A. I met him in the latter part of January, 1865.

Q. Can you come any nearer to it than that?

A. No, sir; it was about three or four weeks after my first introduction to Booth.

Q. If your first introduction to Booth was the 15th of January, then you met Atzerodt about the second or third week in February?

A. I met Atzerodt several days after Surratt's return from Port Tobacco.

Q. I ask you now in reference to your introduction to Booth; you met Atzerodt how many weeks afterwards?

A. I stated on the trial of the conspirators some three weeks.

Q. What do you say now?

A. I say from three to four weeks after my introduction to Booth. Atzerodt came to the house about a week after Surratt's return from Port Tobacco.

Q. How often did you see him at the house?

A. I saw him very frequently; Surratt introduced me to him, as he did to every one of the party.

Mr. BRADLEY. Will you be good enough to answer my questions, and not show your spirit to Surratt as you are doing constantly.

The DISTRICT ATTORNEY said he was not aware that the witness had shown any improper spirit towards the prisoner.

Mr. BRADLEY replied that he had, and this was the fourth time this morning.

The COURT cautioned the witness to answer the questions put to him and there stop.

Q. How often did you see him there?

A. Very frequently.

Q. When was the last time you saw him there?

A. I met him the second of April, when he had an interview with Mrs. Surratt.

Q. Then, between the time you first saw him, which was some time in February——

WITNESS. No, the latter part of January.

Q. You now say in the latter part of January?

A. Yes, sir.

Q. Did not you say on the other trial that your introduction to Booth was on the 15th of January?

A. I said about the 15th of January, to the best of my recollection at that time.

Q. Did not you fix the date, by certain outside incidents, as the 15th of January; and did not you say you met Atzerodt four weeks after your introduction to Booth?

A. Yes, sir; I said so.

Q. And I now ask whether you have changed the time of your introduction to Booth?

A. Yes, sir; I have changed the time of my introduction to Booth. I should have changed the time while the trial of the conspirators was going on if I had been permitted to do so.

Q. During that time you say you frequently saw Atzerodt in the house; did you not on the trial of the conspirators say you had seen him as many as twenty times?

A. I think I said as many as ten or fifteen times.

Q. Did you not say on that trial you had seen him at that house as many as twenty times?

A. I did not count his visits.

Q. Did you ever see him there when Booth was there?

A. No, sir.

Q. Did you not say that you saw Booth there almost every day?

A. Every day when he was in the city.

Q. Atzerodt was there ten, fifteen, or twenty times, and Booth was there every day, and yet you say you never saw them together?

A. I do not remember seeing him in Mrs. Surratt's house with Booth; I have seen him at other places with Booth.

Q. I ask you what you said on that subject in the trial of the conspirators?

A. I said that I had never seen him in company with Booth at Mrs. Surratt's house, and I say so now.

Q. You spoke of Mrs. Slater being at that house; when did you first see her there?

A. I saw her, I believe, some time in the latter part of March; I cannot remember the precise date when I saw her; I saw her the 25th of March, when she was in the buggy with John Surratt and his mother.

Q. Will you describe how she was dressed at the time she first came?

A. I do not know how she was dressed at the time I first saw her; I know she had one of these small veils over her face, which came down to the chin.

Q. When was that?

A. That was some time in March.

Q. Did you not testify before the military commission as follows:

"Q. How did you learn anything with reference to the antecedent of Mrs. Slater?

"A. It was told to me by Mrs. Surratt herself.

"Q. What did Mrs. Surratt tell you?

"A. Mrs. Surratt told me that she came to the house in company with this man Howell; that she was a North Carolinian, I believe, and that she spoke French; and that she was a blockade runner or bearer of despatches.

"Q. Where were you at the time Mrs. Surratt told you this?

"A. I was in the house, in the dining-room.

"Q. Are you certain, beyond all doubt, that Mrs. Surratt ever told you Mrs. Slater was a blockade runner?

"A. Yes, sir.

"Q. Had you ever seen Mrs. Slater at the house of Mrs. Surratt before that time?

"A. I, myself, saw Mrs. Slater at the house only once. I learned she had been to the house twice.

"Q. You never saw her but once?

"A I saw her only once.

"Q. How long was she there?

"A. She remained there one night.

"Q. Did you have any conversation with her yourself?

"A. She drove up to the door in a buggy, the bell rang, and there was a young man in the buggy with her. Mrs. Surratt told me to go out and take her trunk. That is all the conversation I had with her. She had a mask down; one of the short masks ladies wear. They call them masks, I believe; they are not veils."

Q. Did you then describe this as a mask?

A. I did not call it a mask.

Q. One of the members of the commission called it a mask, and did not you say "it was what ladies call a mask?"

A. I do not remember saying so; I may have done so. What I intended to say now was that Mrs. Slater did not wear any disguise. I understood you to have reference to something to conceal the face. I remember I did use the word "mask."

Q. I will now proceed with the examination. Did you on that trial testify as follows:

"Q. At the time you say she told you she was a blockade runner, did she tell you of her being a North Carolinian, and speaking French?

"A. Yes, sir.

"Q. Were you in the house at that time?

"A. I was in the house at that time.

"Q. Was any one present besides yourself?

"A. Not that I remember.

"Q. What day was that?

"A. It was some time in the month of February."

A. I do not remember that Howell was in the house in the early part of February, 1865. I understood this Mrs. Slater was at the door, and went away with Mr. Howell in a buggy. I never saw her until the latter part of March.

The DISTRICT ATTORNEY stated that he observed the court was exceedingly unwell; that he himself was quite able to go on, but as the heat was oppressive, and this was Saturday, he would suggest that the court now take recess until Monday.

Mr. BRADLEY said he had suggested, knowing in the morning the health of the court, that the cross-examination of this witness proceed until twelve o'clock; but he saw that his honor was not able to proceed, and he was quite willing that the proceedings should stop now.

The court thereupon took a recess till Monday next, at 10 a. m.

MONDAY, *July* 1, 1867.

The court was opened at 10 o'clock.

By agreement of counsel the cross-examination of Louis J. Weichmann was temporarily suspended, in order to admit of the examination of Mr. Charles C. Dunn.

CHARLES C. DUNN sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation and where were you employed or engaged in December, 1864?

A. In this city as the agent for Adams's Express Company.

Q. You have charge of that company's business here?

A. I had.

Q. In the latter part of December, state what occurred between you and the prisoner in relation to his being employed there.

A. He made application to me for employment.

Q. What did he say in the application?

A. As nigh as I can remember he said that he had been out of employment for some time, and was exceedingly anxious to have a position. After asking him a question or two about his antecedents and his references, the answers being satisfactory and the references equally so, his answers being prompt and businesslike, I assigned him to a position in my freight department.

Q. What day did he take his place?

A. I believe upon the 30th of December, 1864.

Q. When did you pay your employés?

A. All employés upon monthly salaries draw their pay upon the last day of the month.

Q. Then for how many days did you pay him?

A. I take it for granted that he was paid for the two days' services; though I do not know, for I was not cashier.

By Mr. BRADLEY:

Q. You have no knowledge of the facts?

A. I have no absolute knowledge, but it was customary for the office to pay on the last day of the month.

Mr. BRADLEY. But you did not make the payment?

A. No, sir; the cashier made the payments.

Mr. PIERREPONT. The cashier has been upon the stand, and testified to it.

Q. Will you state what occurred on or about the 13th of January following?

A. I did not fix the date; I only say that he was in our service in that office close in the neighborhood of two weeks. It won't vary more than a day or two of that, one way or the other.

Q. Tell the jury what occurred at the end of two weeks.

A. He came into my office, and applied to me for a leave of absence.

Q. What did he say?

A. I expressed my astonishment that he should apply so soon after taking his position, and he gave as a reason that his mother was going down to Prince George's, and he wanted to accompany her as her protector.

Q. What did you say as to his going with his mother to Prince George's, as her protector?

A. I told him that I could not consent to give him the leave of absence he wanted; that he had been there but a short time.

Q. What then occurred?

A. He left the office, and went back to his work. The next morning a lady called in the office. She introduced herself as Mrs. Surratt, the mother of the young man of that name in my employ.

Q. What did she say?

A. She asked that he might have a leave of absence to accompany her to Prince George's county, where she had urgent business.

Q. What did you say to that?

A. That I had no reason to change my mind; I had answered her son's application the day before, and I could not give my consent. She still urged her application, and I told her that it was impossible for me to yield; that her son could go without my consent, if she and he so determined; but if he did, he could not return to that office.

Q. What then occurred?

A. She bade me good morning, and left the office.

Q. What did he do?

A. He left the office the same day.

Q. Did he ever come back?

A. No, sir.

Q. Did he ever come back for his money?

A. No, sir.

LOUIS J. WEICHMANN—Cross-examination resumed.

By Mr. BRADLEY:

Q. On Saturday we were speaking about your acquaintance with Atzerodt. Do you recollect having introduced him to anybody about that time as one of your personal friends?

WITNESS. About what time?

Mr. BRADLEY. While he was living at Mrs. Surratt's, and while you were living there.

A. On the 2d of April I rode down to St. Aloysius church; I then introduced

him to Mr. Brophy; I do not remember whether I said "my particular friend or not.

Q. Didn't you say "particular friend of mine," or words to that effect?

A. I do not remember to have said so.

Q. That was on the 2d of April?

A. Yes, sir.

Q. How do you fix that date?

A. As being after the 1st of April, and as being before the 3d of April.

Mr. BRADLEY. That is usually the case with the "2d of April."

Q. How do you fix the introduction?

A. I fix that date by another circumstance. On the evening of the 1st of April Mr. Jenkins returned from the country with Mrs. Surratt; that evening General Augur's office, at the corner of Seventeenth and I streets, was burned down, and Mr. Jenkins and I went to see the fire. The next day Mr. Jenkins wanted a horse, or one of John's horses, with which to return to the country. I fix that date as the 2d of April, because he wanted the horse the very same day that I introduced Atzerodt to Brophy.

Q. That was the last time you saw him?

A. That was the last time I saw him at Mrs. Surratt's house.

Q. Where did you see him after that?

A. I saw him on the afternoon of the 14th of April, at Howard's stable.

Q. When you met him at Howard's stable, on that day, state what passed there.

A. He wanted to procure a horse. I asked him what he wanted with one. He said he wanted to send Payne off, and also said that he was going to have a ride into the country.

Q. Were you examined to that point by the military commission?

A. I was.

Q. Did you state then that he told you he wanted to get a horse to send Payne off on?

A. Yes, sir. You will find it there in the cross-examination.

Q. Did you so state in the examination in chief?

A. I do not think I did. But I said so in the cross-examination.

Mr. BRADLEY. Let me read from the report of your evidence on that trial: "I remember that I asked Atzerodt where he was going, and he said that he was going to ride in the country. He said he was going to get a horse and send for Payne."

WITNESS. I did not use the word "for," but "off."

Q. Then this is not correctly reported?

A. No, sir. There are several mistakes in that book. The book states that I met "Mr. Boyd." I did not say I met Mr. Boyd, but "Mr. Lloyd." There are several mistakes of that kind there.

Q. You are quite sure that is the case?

A. I am positive that I used the word "off."

Q. You say you corrected that in your cross-examination. Do you refer to your first examination, or when you were recalled.

A. I stated that in the cross-examination. I believe it was in my first examination.

Q. What I have just read to you was in your cross-examination?

A. I believe it was, as near as I can remember—after I was cross-examined by Mr. Johnson on that point.

Q. You now say that was a mistake. You did not say that he was going to send "for" Payne?

A. No, sir. I always had the word "off" in my mind. It was a mistake. There are several mistakes of that kind in the book.

Q. Do you remember meeting Atzerodt at Mrs. Surratt's, and in your room, on one occasion?

A. Yes, sir. He was there several times with John Surratt.

Q. Was he there on one occasion when there was some drinking going on?

A. That was in the early part of February, 1865, when Howell was here. There was a bottle of whiskey in the room, and everybody took a drink all round. I took a drink along with the others.

Q. On that occasion did Mr. Howell give you some money to go and purchase more whiskey with?

A. I do not remember.

Q. You do not remember of his giving you a dollar and a half to go out and get some whiskey with?

A. No, sir. I remember that I went out and bought a bottle of whiskey, but I do not remember that Howell gave me the money to buy the whiskey with. I remember distinctly about buying the whiskey. He may possibly have given me the money, but I do not remember it.

Q. Do you remember taking the bottle under your military cape?

A. Yes, sir. It was winter time, and I put it under my cloak. I have done that more than once.

Q While Atzerodt was there?

A. No, sir. I did it in Philadelphia.

Q. How long was Atzerodt there at that time?

A. I believe Atzerodt stopped in the house all night on that occasion.

Q. No longer than that?

A. No, sir. He stopped in the house only one night to my positive recollection.

Q. In your examination here you have spoken of going to the post office with Surratt when he obtained a letter from the post office addressed to James Sturdy. Can you state when that was?

A. That was about or before the 20th of March, as I stated on Saturday.

Q. That is your best recollection now, is it?

A. Yes, sir.

Q. Do you remember being examined in regard to that subject before the military commission?

A. Yes, sir.

Q. Do you remember the date that you fixed there?

A. I remember that I said that Payne came to the house a short time after the 4th of March. It was my impression at the time I testified in 1865 that Payne did come a very short time after the 4th of March; and then I fixed this circumstance of receiving this letter addressed to James Sturdy about two weeks after that. But by looking at the further cross-examination you will find in that book the date of Payne's coming to the house, on the evening of the 13th of March, fixed from other circumstances which came to my mind.

Q. I ask how you fix the date when you called with Surratt for that letter?

A. I have just stated, as being before the time Surratt left for Richmond on the 25th of March.

Q. Is that the way you fixed it before the commission?

A. Not as to the last point, as to its being received before the 25th of March. I may have said to the commission before the 27th of March. I do not now remember, the examination was so lengthy.

Q. What was the date at which you saw John Surratt fencing with bowie knives?

A. On the 15th.

Q. State whether this report of your testimony before the commission is correct:

"A. On Surratt returning home I asked him where he had left his friend

Payne. He said Payne had gone to Baltimore. I asked him where John Wilkes Booth had gone. He said Booth had gone to New York. This is all that I remember of that circumstance; and some two weeks after, Surratt, when passing the post office, went to the post office and inquired for a letter that was sent to him under the name of James Sturdy; and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it.

"Q. What day was that?

"A. It must have been about two weeks after that affair."

Mr. BRADLEY. That "affair" refers to the horseback ride.

WITNESS. Yes, sir.

Mr. BRADLEY. Which occurred when?

A. On the 16th of March.

Mr. BRADLEY. Then it was about two weeks after that affair?

A. You remember that I testified on my first examination that Payne came to the house a short time after the 4th of March, and I testified then that it was two weeks, a short time after the 4th of March. I say now I made a mistake as to the date.

Mr. BRADLEY. I will read on: "Yes, sir; it must have been before the 20th of March."

WITNESS. Do I not say about the 20th of March?

Mr. BRADLEY. No, sir; "before."

WITNESS. It was about two weeks. I gave you the wrong reference as to the fencing with knives—two weeks.

Q. Now how do you reconcile the change in that date?

A. I have just stated. I have stated that it seemed to me when I first testified that Payne's visit was a few days after the 4th of March, about the 6th or 7th, and then I said it was two weeks after that. The reason I thought it was so soon after the 4th of March was because Payne, when he came there, said that he was sorry he had not got here on the 4th; that it was his intention to have been here at that time.

Q. On your examination, at what time did you fix that ride when John came in, and when there was all this excitement that you have described?

A. I fixed the 16th of March.

Q. At that time?

A. Not the second time when I was recalled, but the last time, in reply to a question of Mr. Cox; you will find it in the second volume of that book.

Q. During that examination, then, you fixed that as the 16th of March, and at the same time say that this Sturdy letter must have been about two weeks after that affair, and that it must have been before the 20th of March. How do you reconcile that?

A. I have just told you how I reconcile it.

Q. That is all the answer you have to make?

A. Yes, sir.

Q. I understand you that Atzerodt was at the house when or while Howell was there?

A. Yes, sir.

Q. What date do you fix that at?

A. That was in the early part of February, 1865. Howell was there only once.

Q. Who was Howell?

A. A blockade runner.

Q. How do you know?

A. John Surratt told me so.

Q. Were you intimate with him while you were there?

A. I treated him kindly.

Q. Is that all?

A. I did not consider that I was intimate. I treated everybody kindly that Surratt introduced me to.

Q. Did you have any conversation with him about the condition, &c., of the federal forces?

A. No, sir, because I was not posted on that myself. I had some conversation with him with reference to prisoners of war. The exchange was going on at that time, and I remember that I used to sit there nearly every afternoon and read from the Evening Star the number of prisoners that were exchanged. I believe, on one occasion, the number of prisoners on hand at the various camps, or the total number of prisoners, was stated.

Q. You knew he was a blockade runner?

A. Yes, sir.

Q. And you had a conversation with him with regard to the number of prisoners and so on. Did he not teach you a secret cipher used by the signal corps of the confederate forces?

A. No, sir. He taught me a cipher. I was not aware that it was used by the secret service of the South. Howell himself says he learned it in a magician's book.

Q. Did he teach you how to read this cipher?

A. Yes, sir. I have made a dozen copies of it since.

Q. Did he so teach it to you that you could use it?

A. Yes, sir.

Q Have you ever used it?

A. Before the assassination of Mr. Lincoln, the only use I ever made of it was to write the first two sentences of Longfellow's poem on——

Mr. BRADLEY. Then you have used it? That is the question I put to you.

A. Yes, sir; but that is the only way in which I used it. I cannot say that I was very familiar with it.

Q Do you know a gentleman in this city, residing here at that time, named Mr. Rocoford?

WITNESS. What was he—a clergyman?

Mr. BRADLEY. Yes, sir.

WITNESS. I do.

Q. Did you ever tell him that you were employed to furnish information?

A. No, sir. I never had any conversation with Mr. Rocoford except at his feet in the tribunal of penance.

Q. That is in the confession?

A. Yes, sir.

Q. You never had any conversation with him except in the confession?

A. No, sir, except on one occasion, and that was after I was released from Carroll prison, meeting him on the steps outside St. Aloysius church. I asked him a single question, whether he would hear my confession that evening. He replied "not that evening." That is the only conversation I ever had with him.

Q About that your memory is quite distinct?

A. I remember that very distinctly.

Q. I think in your examination in chief you stated that you were not arrested on the morning after the assassination of the President; am I correct?

A. On the morning after the assassination of the President I met Mr. Holhan on the corner of——

Q. Can you answer that question?

A. I never considered myself arrested.

Q. Were you put in charge of anybody?

A. I never considered myself so.

Q. You say you were not put in charge of anybody?

A. Not that morning.

Q. Were you not put in charge of a detective?

A. The following Sunday morning Mr. McDevitt said, "You will go with me; you are under my charge."

Q. Were you not on Saturday put under the charge of a police officer of this city?

A. Not that I remember.

Q. You were examined on that point at the conspiracy trials. In the report of your evidence I find the following:

"Q. Were you arrested?

"A. I surrendered myself on Saturday morning at eight o'clock to Superintendent Richards, of the Metropolitan Police force. I stated to him what I knew of Payne, Atzerodt, and Herold visiting the house. I stated also what I knew of John Surratt; that I saw these men in private conversation.

"Q. What was your object in being so swift to give all this information?

"A. My object was to assist the government.

"Q. Were any threats ever made to you by any officer of the government in case you did not divulge?

"A. No, sir; no threats at all.

"Q. Any inducements?

"A. No, sir; no inducements at all. I read in the papers that morning the description of the assassin of Secretary Seward. He was described as a man who wore a long gray coat. I had seen Atzerodt wear a long gray coat. I went to a stable on G street and told the man there I thought it was Atzerodt. We went down towards Tenth street, and met a gentleman by the name of Holahan, and he also communicated his suspicions to me. The gentleman and I returned to breakfast, and took breakfast; but, at half-past eight o'clock we gave ourselves up to Superintendent Richards, of the Metropolitan Police force. I told officer McDevitt about this man Payne, and where he had been stopping. I also told him of Atzerodt, and I also told of Herold. Officer McDevitt put me in his charge and said, 'You will go with me.' We then went to General Rucker's office, and General Rucker"——

WITNESS. I wish to correct that. It was not to Superintendent Richards, but to the men under him. I made that mistake several times.

Mr. BRADLEY, continuing the reading:

"I told officer McDevitt about this man Payne, and where he had been stopping. I also told him of Atzerodt, and I also told of Herold. Officer McDevitt put me in his charge and said, 'You will go with me.'"

WITNESS. I did not consider that an arrest. I considered it more as a protection.

Q. Were you released from this arrest until after you had visited Montreal?

A. I was with those gentlemen all the time.

Q. You stated on your examination in chief that you did not go back to Mrs. Surratt's. Was not that the reason why you did not go back, that you were under arrest, and in the custody of these officers?

A. They did not want me to go back. I could have run way when I was in Canada just as easy as that (snapping his fingers) if I had desired to.

Mr. BRADLEY. I ask you, and desire you to state "yes," or "no," whether when you stated that you did not go back to Mrs. Surratt's and put your clothes in wash, it was not because you were under arrest all that time?

A. I never considered myself under arrest. I considered myself as much of a detective as McDevitt was on that occasion. In the pass I received from the War Department at that time I was called "special officer, Louis J. Weichmann."

Mr. BRADLEY. Where is that paper? I would like to see it before you speak of its contents.

Mr. PIERREPONT. Here it is.

The paper was then read as follows:

HEADQUARTERS DEPARTMENT OF WASHINGTON,
OFFICE OF PROVOST MARSHAL GENERAL,
WASHINGTON, D. C., *April* 16, 1865.

[Special Orders No. 68.—Extract.]

Special officers James A. McDevitt, George Hollahan, and Lewis J. Weichmann are hereby ordered to proceed to New York city on important government business, and after executing their private orders, to return to this city and report at these headquarters. The quartermaster's department will furnish the necessary transportation.

By command of Major General Augur:

T. INGRAHAM,
Colonel and Pro. Mar. General, defences north of the Potomac.

Official: G. B. RUSSELL,
Captain and Asst. Pro. Mar General defences north of the Potomac.

[Indorsement.]

OFFICE PRO. MAR. GENERAL,
DEFENCES NORTH OF THE POTOMAC.
Washington, D. C., April 16, 1865.

Respectfully referred to L. J. Weichmann, for his information.

G. B. RUSSELL,
Captain and Asst. Pro. Mar. General.

Q. Was that anything other than an order to furnish transportation to McDevitt and the two men with him?

A. Why, I am called "special officer" in it.

Mr. BRADLEY. I know that. I ask you whether you were out of the sight of some one of the police officers of this place at any time after the morning of the 15th of April until you returned from Canada?

A. I was.

Q. When?

A. I was out of sight of the detective for a half day. I went to see a clergyman of my own faith there for the purpose of stating to him my position. I stated to him that the government would probably make me a witness on this trial; and that no matter what might come, I was determined to go back and do my duty to the government.

Q. Have you not said in substance, if not in words, that you would not have come back from Montreal if you had not been forced to come?

A. No, sir. A despatch was sent to me by Secretary Stanton, and I came back just as voluntarily as I could. There was only one regret that I had in coming back.

Q. On your examination here, if I recollect aright, you stated that on the 14th of April, when you were about starting after a buggy to take Mrs. Surratt to Surrattsville, in passing out of the door you saw Mr. Booth in conversation with her in the parlor?

A. I wish to have it distinctly understood that I first met Mr. Booth as I was passing out of the door, at which time I shook hands with him. He said to me, "How are you, Mr. Weichmann?" That is all that passed.

Q. At what time was that?

A. Between twenty-five minutes after two and twenty-five minutes before three.

Q. You went after the buggy?

A. Yes, sir. When I went into the house and went up to my room, as I was going past the parlor I saw Booth inside. He was standing there resting

his arm on the mantel-piece and engaged in conversation with Mrs. Surratt, who was standing with her back toward him.

Q. How long were you absent after that buggy?

A. It does not take more than three or four minutes to harness up a horse and buggy. I suppose I was gone not more than seven or eight minutes.

Q. It would take more than seven or eight minutes to walk from Mrs. Surratt's round to Howard's stable and get the buggy fixed up and then drive back again, wouldn't it?

A. No, sir. Howard's stable was only a half square from Mrs. Surratt's. All you had to do was to turn up a little alley and you could reach there in thirty seconds.

Q. Did you go through the alley?

A. Yes, sir. Going along H street towards Seventh there is a little alley, and I turned off down that alley. I did not go around on Seventh street.

Q. You went around by the soap chandler's?

A. I do not know whether there is any soap chandler there or not. After I went to the stable to get the buggy I went and dropped my letter in the post office. When I got back the buggy was hitched up; I then came back right away.

Q. Then you did go to the post office while they were hitching up the buggy?

A. Yes, sir.

Q. Do you mean to say that you could go to Howard's stable, order a buggy, go to the post office and deposit a letter, return to the stable, get the buggy, and drive back to Mrs. Surratt's in six or seven minutes?

A. I could do the whole thing in ten minutes.

Q. I misunderstood you in your examination in chief. I understood you to say then that you drove around to the post office in the buggy.

A. No, sir; I did not drive around to the post office in the buggy.

Mr. BRADLEY. I misunderstood you then.

Q. On your examination before the military commission, did you state those incidents in that order of succession—that when you went out you shook hands with Booth, and he went into the parlor; and that going up to your room after this you saw him and Mrs. Surratt in the position you have described?

A. No, sir. I remember these circumstances more clearly now than I did at that time. I had then been in prison for some time, and was laboring under a great deal of excitement, and under a great deal of nervousness, which would not have been the case had I been in my ordinary frame of mind.

Q. Then your memory is much more distinct now, two years after the event, than it was at the time?

A. Yes, sir.

Q. Will you tell us in what order of succession you stated the facts at that trial?

A. I believe I stated that I went around and hired the buggy. I do not know whether it was before I returned with the buggy or afterwards that I saw Booth. I do not remember how I stated it then.

Q. How do you know that you did not state it in the way you state it now?

A. I have read the book, and I have seen that I did not state it in that way.

Q. When did you read the book?

A. I have read it within the last two years, and within the last four months.

Q. Have you read it within the last two days?

A. I read it yesterday.

Q. And although you read it yesterday, you cannot recollect how you stated it on that trial?

A. I did not notice that point particularly.

Mr. BRADLEY. So I supposed. Let me recall it to your mind.

Q. Did you state anything on that trial about your having seen Mr. Booth when you were going after the buggy?

A. I do not remember. I stated that I saw Booth in the parlor with Mrs. Surratt; whether it was before or after I returned with the buggy I do not now remember.

Q. Didn't you state that you went and got the buggy, and when you came back and went to your room, in coming down you saw Mr. Booth in the parlor with Mrs. Surratt, and it could not have been over five minutes that they were together.

A. I do not remember.

Mr. BRADLEY. Suppose I turn to the report of your testimony on that point and get you to tell me whether it is correct.

While Mr. Bradley was looking for this portion of the witness's testimony the witness said: I think you will also find in that book that I said in the cross-examination that when Payne made his first visit to the house he asked to see Mrs. Surratt.

Mr. BRADLEY. I think I will find it stated three different ways. In regard to that I will say that I find this stated here, "Payne asked you to introduce him to Mrs. Surratt, and that you did introduce him."

WITNESS. I remember you read that, but I remember the cross-examination, now, too.

Mr. BRADLEY. Since yesterday you have examined it?

WITNESS. Yes, sir.

Mr. BRADLEY. I have found what I was looking for. I will now read it to you:

"Q. Will you state whether on the afternoon of the 14th of April, the day of the assassination, Mr. Booth did not call and have a private interview with Mrs Surratt, at her house?

"A. I will state that about half past two o'clock, when I was going to the door, I saw Mr. Booth. He was in the parlor, and Mrs. Surratt was speaking with him.

"Q. Were they alone?

"A. Yes, sir. They were alone in the parlor.

"Q. How long was it after that before you drove to the country with Mrs. Surratt?

"A. He did not remain in the parlor more than three or four minutes.

"Q. And was it immediately after that you and Mrs. Surratt set out for the country?

"A. Yes, sir."

Q. Is that the way you stated it?

A. I stated it in that way. The time I saw Booth in the parlor was when I came down from my room On the first occasion I saw him while I was passing out; and I then shook hands with him.

Q. You say that on that day, as you were going out to Surrattsville, with Mrs. Surratt in the buggy, you met John M. Lloyd just beyond the little village of Uniontown, and had a conversation?

A. Not on that day.

Mr. BRADLEY. No, the Tuesday previous; you are right.

Q. Do you recollect whether you were interrogated as to that before the commission.

A. Yes, sir.

Q. What did you state in regard to that conversation; as to the tone of voice?

A. I said it appeared to me as if it were in a whisper; that Mrs. Surratt leaned sideways out of the buggy and talked to Mr. Lloyd, while I leaned back and sat upright.

Q. That you think is the statement?

A. Yes, sir.

Mr. BRADLEY. Now, let me read you the report of your testimony on that point, and you can tell me whether it is a correct report or not:

"Q. Did you hear any of the conversation that passed at the time between him and Mrs. Surratt?

"A. No, sir; I leaned back in my buggy, and Mrs. Surratt leaned sideways in the buggy and whispered, as it were, in Mr. Lloyd's ear."

WITNESS. I stated that.

Q. Is that the same statement you have made here?

A. Almost the same. I have stated that I did not hear that conversation.

Q. Haven't you stated here that it was in such a low tone that although you could hear the voices, you could not distinguish the words?

A. Neither could I hear their voices.

Q. Do you mean to say a whisper or a tone of voice?

WITNESS. Is not a whisper a tone of voice?

Mr. BRADLEY. No, sir; not in the ordinary, common acceptation. We make a distinction.

WITNESS. True, it is not so in the ordinary acceptation; but a whisper is nevertheless a tone of voice produced by the vocal organs.

Q. You desire to have the jury understand, then, that by "whisper" and "low tone of voice," you mean the same thing?

A. Yes, sir.

Q. You say you were not arrested. Didn't you state on the trial, before the military commission, that you surrendered yourself to the government?

A. Yes, sir. I surrendered myself to Messrs. McDevitt and Clarvoe.

Q. Did you not, on that trial, state that you were arrested by the government?

A. I do not remember.

Q. Your language is, I believe, "arrested by Mr Stanton."

A. I say that now. After I got back from Canada I was at large for a day. Then I had an interview with Mr. Stanton. He thought it would be safer for me——

Q. Did you surrender yourself then to the government?

A. Yes, sir. I told Mr. Stanton I was at the disposal of the government in this thing, and that he could do with me what he pleased.

Q. Then Mr. Stanton did not have you arrested?

A. Mr. Stanton first said to me: "Mr. Weichmann, for your safety in this thing, you will have to go to Carroll prison." Says I, "Mr. Stanton, I am at the disposal of the government. You can do with me what you please. I want this thing investigated." Mr. Stanton knows this is what I said.

Q. On the trial before that commission, did you state, "when I surrendered myself to the government I surrendered myself because I thought it was my duty"?

A. Yes, sir; it was my duty.

Q. Did you state that?

A. I did.

Q. Then when you say you surrendered yourself, you mean that you only went there and told them what you knew?

A. Yes, sir.

Q. Did you mean by "surrendering," to put yourself in the custody of the government?

A. Yes, sir; to let the government do with me what they pleased in the matter. I was not afraid of any investigation, but asked for it.

Q. Do you say that you were after that in custody or not?

A. I was in custody for thirty days.

Q. The first time you reported yourself to Mr. Richards?

A. Not to Mr. Richards, but at Mr. Richards's office.

Q. You think you were not in custody at all: is that it?

A. I thought I was not, because I was a special officer.

Q. You were not a special officer until the 16th, I suppose?

A. Not until the 16th.

Q. Between the morning of the 15th and the time that the order was given by Mr. Stanton, were you in custody?

A. I never considered myself so. I rode round on horseback with Messrs. McDevitt and Clarvoe, and was with them all the time.

Q. Did you ride with any one else besides an officer?

A. I rode with Mr. Holahan; he was just as much in custody as I was.

Q. Did you ride with any one when you had not a police officer with you?

A. From the time I gave myself up on the morning of the 15th to the time I went to Canada I was in charge of a police officer all the time; but I never considered myself under arrest.

Mr. BRADLEY. I don't ask what you considered; I ask you if you were under the charge of a police officer all the time?

A. I was.

Q. You say that on the morning of the 14th of April, at Mrs. Surratt's instance, you procured a buggy?

A. Not on the morning of the 14th.

Q. At noon of that day?

A. Afternoon.

Q. Had you had dinner?

A. No, sir; I had had lunch between 2 and 3 o'clock.

Q. At her instance—I won't be particular as to the time—you procured a horse and buggy to drive her to Surratsville, and when she came down stairs and was about to get in she said, "Wait a moment, until I go up stairs and get Mr. Booth's things;" and that she did go, bringing something down, and put it in the bottom of the buggy, and told you it was glass?

A. Yes, sir; she used the word "glass," and she said it was brittle.

Q. Did you take it and fix it in the buggy?

A. I do not remember whether I took it or not. It was put in there. One side of the buggy was wet, and she was afraid of it getting wet.

Q. Didn't you handle it and fix it?

A. I believe I did put it in the bottom of the buggy.

Q. Have you told the jury what that was?

A. I stated in 1865 that it felt to me like three or four saucers wrapped up together; like a glass dessert dish; that was my impression at the time. I did not know what was in the package at all.

Q. You then stated on your examination in chief that you thought it was some saucers. Why did you not state that here the other day?

A. I described the diameter of the package as 5 or 6 inches, and that it was wrapped up in brown paper, with a string around it.

Mr. BRADLEY. I don't think you stated anything of the sort. I understand you to say that you did not get out of the buggy at Surrattsville that day, but drove up and down the road until Mrs. Surratt came up?

A. I do not think I said that. I said that a part of the time I drove up and down the road. Mrs. Surratt got down about half-past 4, and left about half-past 6. I was out of the buggy.

Q. In the house?

A. Yes, sir. I told you that I wrote a letter in Mrs. Surratt's parlor, and certainly it was necessary to get out of the buggy to write that letter.

Q. When you went out and got into the buggy, after writing that letter, had Mr. Lloyd returned?

A. I do not know precisely at what time I got into the buggy again, but I know just as we were about to drive off I saw Mr. Lloyd, and he recognized me.

Q. Was Mrs. Surratt with you all the time after you wrote that letter until you got into the buggy?

A I do not remember that she was.

Q. Did she go out with you to get into the buggy?

A. I do not remember that she did. My impression is that she came out on the road-side and I helped her in.

Q. You didn't get into the buggy, then, before she came?

A. I believe that I was seated in the buggy, but when she came up I got out and helped put her in.

Q. Can you state how long after you wrote that letter and resumed your seat in the buggy it was before Mrs. Surratt came to get in?

A. It is impossible for me to remember that now.

Q. Where was the buggy standing?

A. Right in front of Mr. Lloyd's house on the road; right along the fence. I believe there was a fencing facing towards Mr. Gwynn's place.

Q. And your impression is that you sat there after you wrote that letter until Mrs Surratt and Mr. Lloyd came out?

A. I did not see Mr. Lloyd come out of any place at all; I only saw Mr. Lloyd when he came by the buggy.

Q. You were out in front of the house, or in the house, all the while from the time you wrote that letter?

A. I cannot say, positively, that I was out in front of the house all the time, or that I was in the house all the time after I wrote the letter. I might have ridden up and down the road.

Q. You did not see Mr. Lloyd come there in a buggy?

A No, sir; I do not remember to have seen him All I saw of Mr. Lloyd was in front of our own buggy when he recognized me.

Q. As to when he came or how he came, you know nothing?

A. No, sir; I saw one buggy driving up there, but Mr. Gwynn was seated in that buggy. I believe there were two horses in it.

Q. Do you remember a conversation with Mr. Lloyd on the subject of the interview between himself and Mrs. Surratt, at Uniontown, or near Uniontown?

A. No, sir; I had some conversation with him in 1865. He then felt astonished and angry on learning that I had not overheard the conversation between himself and Mrs. Surratt I could not help that, however.

Q. Did you tell him you had sworn to the whisper?

A. He knew that; he had read it in the papers, and I think I told him.

Mr. BRADLEY. I want to know what you said to him. Didn't you tell Mr. Lloyd on your examination below that you had sworn to a whisper?

A. I do not remember; I may have told him so; I believe that I did.

Q. Do you remember what his reply was?

A. No, sir.

Q. You were both in prison at that time?

A. Yes, sir; but in different rooms.

Q. Did not Mr. Lloyd tell you there, that if you had sworn to a whisper, you had sworn to what was not true?

A. I cannot remember what Mr. Lloyd said. I do not recall anything of that kind that he said. I am judge of my own conscience and Mr. Lloyd is not. I know what I heard, and he knows what he heard.

Q. I wish to know whether you have stated, at any time, that in your first interview with the Secretary of War you told him where John Surratt was?

A. No, sir; I never told the Secretary of War that, because I did not know.

Mr. BRADLEY. I did not ask whether you had told the Secretary of War that. I want to know whether you did not tell Mr. John T. Ford that you

had told the Secretary of War where John Surratt was at the time of the assassination?

A. No, sir.

Q. Did you repeat to him what passed at the interview with the Secretary of War?

A. I may have done so.

Q. If you did, you say you did not tell him that you had told the Secretary of War where John Surratt was at the time of the assassination?

A. I never said anything of the kind, because I did not know where he was. I told Mr. Ford that I had had an interview with the Secretary of War, and I believe I did state to him what passed at that interview.

Q. Did not you state to him that you had told the Secretary of War that John Surratt had left here a considerable time before the assassination, and that, from a letter which you had seen, he must have been in Montreal at that time?

A I may have said that; I may have said that I had not seen John Surratt for a considerable time before the assassination, and that I had seen a letter from him dated April 12; but I did not state to the Secretary or to Mr. Ford that I knew where John Surratt was when the blow was struck, because I did not know.

Mr. BRADLEY. I do not know whether you knew or not; that is not the question. I ask you if you did not tell Mr. John T. Ford that you had had an interview with the Secretary of War, and had told him all you knew about that affair, and of John Surratt's whereabouts at the time of the assassination, and that you had not seen John Surratt for ten days or two weeks before, and that you had seen a letter which satisfied you that John Surratt was in Canada at the time?

A. I believe I have told Mr. John T. Ford that; I have told it on the stand here; but I did not tell Mr. Ford that I knew where John Surratt was when the assassination took place.

Q. I ask you again, if you did not tell Mr. Ford, also, of the cipher which had been given to you, and explained to him how it was?

A. I do not remember.

Q. I ask you whether you did not tell Mr. Maddox and Mr. Gifford that you were told by Mr. Bingham that if you did not state more fully than you had done, all you knew, you would be treated as one of the conspirators—not in those precise words, but the substance?

(Mr. Pierrepont objected.

Objection withdrawn.)

A. No, sir; I do not remember to have said anything of the kind.

Q. Do you say you did not?

A. I never heard Mr. Bingham make a remark of that kind.

Mr. BRADLEY. That is not an answer to my question.

A. I gave you my answer. I do not remember to have said anything of the kind.

Q. Do you say that you did not tell them of any interview with Mr. Bingham, in which Mr. Bingham had used that language to you?

A. I may have spoken of an interview with Mr. Bingham, but I never told them that Mr. Bingham used threatening language, because Mr. Bingham did not use threatening language.

Q. I want to know whether you have not said since you have been here as a witness that your character was at stake in this issue, and that you intended to do all you could to aid the prosecution?

WITNESS. Whether I made that statement on the stand here?

Mr. BRADLEY. No, sir; in the passage there, before you came upon the stand.

A. I may have said so.

Q. I ask you whether you have not stated to Mr. Rocoford, in substance,

that the appointment given to you in Philadelphia was the fulfilment of a promise that you should have an office under the government for the testimony you had given in this matter, and that the government would protect you?

(Objected to by Mr. Pierrepont. Objection sustained. Exception reserved.)

Q. You stated on Saturday that you were removed from the custom-house in Philadelphia because you had voted the radical republican ticket. I ask you whether you have not stated that you were a thorough Johnson man, and as such held your position in that office?

(Objected to by Mr. Pierrepont. Objection sustained. Exception reserved.)

Q. I understood you, in your examination in chief, to state that on your return from a visit to Surrattsville with Mrs. Surratt, you got on the high ground southeast of Washington, and made some pleasant remark as to the beauty of the scenery and position of the country, and that she replied to you, "I am afraid all this rejoicing will be turned into mourning, and all this gladness into sorrow." Did you say anything of that kind before the commission?

A. I did not.

Q. You say that after the police officers were gone, on the night of the 14th, Miss Anna Surratt remarked: "O, ma, just think of this man having been here an hour before the assassination—meaning John Wilkes Booth. I think all this thing will bring suspicion on the house." I want to know why you say she meant J. Wilkes Booth.

A. I believe I have already stated that when the detectives and myself went down stairs we announced that Mr. Lincoln had been murdered by John Wilkes Booth, and that Mr. Seward had been assassinated, but I believe I said, out of respect to Mrs. Surratt's feelings, that the name of her son had not been mentioned at all as being suspected of the thing.

Q. So that your remark had reference to Booth, and you understood Miss Anna Surratt as replying to it?

A. Yes, sir; the conversation at the time was about Booth.

Q. What did Mrs. Surratt reply?

A. She says, "Come what will, I am resigned. I think J. Wilkes Booth was an instrument in the hands of the Almighty to punish this proud and licentious nation."

Q. Then she understood her daughter to reply in that way also?

A. Yes, sir; I presume so.

Q. Did you give one word of this testimony before the military commission?

A. I did not, simply because the facts were not as clear in my mind then as now.

Q. You say Mrs. Surratt asked you to pray for her intentions?

A. Yes, sir.

Q. After this exclamation to which you have referred?

A. No, sir; on the 14th of April.

Q. And before the assassination occurred?

A. Yes, sir.

Q. Have you stated this matter before to anybody?

A. (No response.)

Q. Have you written it down?

A. No, sir; I did not *write* it.

Q. Have you ever written it down?

A. I have written it all down here within the last five or six months. I prepared a statement for the prosecuting attorney.

Q. Do you recollect whether, when you first wrote it down, you did not write that this exclamation of hers, or application to pray for her intentions, was after she had made that remark in reply to her daughter?

A No, sir; I am positive I never wrote that down as happening after the assassination. She asked me to pray for her intentions before the assassination?

Q. Didn't you tell us, on your examination here the other day, that she was walking up and down the room, with beads in her hands, and very nervous and excited when she asked you to pray for her intentions, after the detectives had gone away?

A. No, sir.

Q. Have you not in a verbal or a written statement, or both, said that after the detectives had gone away, and after the remark of Miss Anna Surratt and the reply of her mother, she, Mrs. Surratt, while walking up and down the room with beads in her hands, and in a state of agitation, asked you to pray for her intentions, to which you replied, "I do not know what your intentions are, and I cannot pray for them," when she answered "pray for them anyhow?"

A. I am positive all that occurred before the assassination.

Q I am not asking you what you are positive about, but I am asking you whether you have not written down, and have not stated, that that thing occurred after the detectives had gone?

A. No, sir; I do not remember to have done anything of the kind.

Q. When did it occur?

A. Directly after I got up from supper, while I was sitting on the sofa with Anna Surratt, Miss Fitzpatrick, and others.

Q. That same evening?

A. Yes, sir.

Q. How was this matter introduced?

A. Well, I was sitting there, and she appeared to be very nervous. I asked her what was the matter. She said she did not feel well; and then she asked me which way the torch-light procession was going on the avenue. I told her that it was the arsenal employés, and that they were going up to serenade the President. After walking up and down awhile, she asked me the question to which you have referred.

Q. These three ladies you have named were in the room at the time?

A Yes, sir.

Q. She said it loud enough for them to hear.

A. I heard it.

Q. It was said while you were sitting on the sofa with them?

A. Yes, sir.

Q. Did she come up and whisper it?

A No, sir; she said it right out.

Q. Loud enough for them to hear?

A. They might not have paid attention.

Q. Did not she say it loud enough for them to hear?

A. Yes, sir; I heard it.

Q. You replied, and her answer was in the same audible tone?

A. Yes, sir.

Q. I want to know what time in the evening it was you heard those footsteps up stairs on the 14th of April?

A. I was at supper.

Q. What time in the evening?

A. About nine o'clock, or ten minutes past. After I returned from taking the buggy back, I went directly to the supper room.

Q. How long were you at supper?

A. Perhaps ten minutes.

Q. During that time you heard footsteps coming up the steps?

A. Yes, sir.

Q. You say Mrs. Surratt went to the door?

A. Yes, sir.

Q. And about that you are positive?

A. Yes, sir; I testified to that in 1865, and so testify now.

Q. How soon after she went up did you follow her?
A. As soon as I got through supper.
Q. How long was the person there?
A. No more than from three to five minutes.
Q. And you went up immediately after the person went out?
A. It must have been almost immediately.
Q. Where did you find her?
A. She was in the parlor.
Q. What was she doing then?
A. Walking up and down the room.
Q. How soon after you went up, did the young ladies follow you?
A. That I do not remember; they may have come up with me.
Q. Did she leave the room again before you left it?
A. That I do not remember.
Q. Have not you given us to understand that she said, while you all were amusing yourselves, that you were making too much noise?
A. I believe she was in the room all the time we were in there.
Q. I want to know if there was any time that evening after she went up stairs, when she could have gone down into the supper room to get supper for another person?
A. She could, after I went to bed.
Q. What time did you go to bed?
A. A few minutes before ten—perhaps ten o'clock.
Q. Up to the time you went to bed, could she have gone down there to get supper for anybody else without your knowing it?
A. Yes, sir; she could have gone.
Q. Although she was in the room all the time until you went to bed?
A. She could have gone down there without my knowing it, and have furnished supper. She could not have gone down without my knowing it, but she could have furnished supper without my knowing it.
Q. How furnish supper without your knowing it?
A. She need not have told me what she went down stairs for?
Q. Did she go down stairs?
A. Not that I remember.
Q. Was she absent from that room long enough to go down stairs?
A. It is my impression she was in the room all the time I was there. I did not see her leave the room.
Q. Are you quite sure that person ran up the steps, and ran down again?
A. I heard footsteps; I was sure in '65, and I am sure now.
Q. Did you hear anybody come in the basement door after that?
A. No, sir.
Q. Was there more than one person who went up those steps?
A. No, sir.
Q. None went into the basement door that you know of?
A. No, sir.
Q. Now, I go back to the night of the 3d of April. Had Mrs. Surratt been absent during the day of the 3d of April?
A. That I do not remember.
Q. At what time in the evening did you see John Surratt?
A. About half past six or seven o'clock.
Q. Where?
A. I was sitting in the parlor, as was also his mother, when he walked into the room.
Q. Before or after supper?
A. That I do not remember.
Q. He took supper with you?

A. We only took two meals a day. We did not take supper.

Q. How came you to have supper Friday?

A. Simply for the reason that I ate no dinner that day, and I was consequently pretty hungry; I had to eat something when I came home.

Q. You were all down in the dining-room on the evening of the assassination?

A. Yes, sir.

Q. Had not any of them had anything to eat that day?

A. I suppose they had; they took some lunch with me at one o'clock. I had not anything to eat from one o'clock until I got home, and I felt very hungry.

Q. I ask you if you were not in the dining-room at Mrs. Surratt's on the evening of the 3d of April with John Surratt?

A. No, sir.

Q. About half past six or seven you say he came?

A. Yes, sir.

Q. Do I understand you to say that he did not leave the room then until he came out with you?

A. I do not remember whether Surratt went down stairs to get his supper or not.

Q. Don't you remember that he did? Have not you said so?

A. No, sir; I have not a distinct recollection, and I have not said so.

Q. You have not said that John Surratt came in and sat there for a few moments, and then went down to the dining-room to get his supper?

A. No, sir; I have not said so, because I am not positive of that fact. He may have taken supper there.

Q. On the evening of the 3d of April did not the ladies go down there into the supper room, and was not John Surratt there?

A. No, sir; because I had my dinner at three o'clock, I did not want any supper. I am positive that I took no supper on the third of April.

Q. You did not go down into the dining-room when tea was made that evening, and have not said you did?

A. Not that I remember.

Q. If I understood you rightly, your impression is that the person who came up the steps on the night of the fourteenth of April came into the parlor. Can you say whether he came into the parlor, or only into the vestibule or hall?

A. I am positive I heard his footsteps going into the parlor.

Q. And you are positive that when the door bell rang. Mrs. Surratt went up, opened the door, and let him in?

A. Yes, sir.

Q. Did not Miss Anna Surratt do that?

A. Not that I remember.

Q. Was the ring loud enough to attract the attention of everybody there?

A. Yes, sir; the bell was a very loud one; it was the loudest of any I have ever heard in the city for a door bell.

Q. You have stated that the morning after the assassination you met Mr. Holahan?

A. Yes, sir.

Q. Where did you meet him?

A. At the corner of Seventh and F streets, right in front of the post office. He was coming from the direction of Tenth and F streets.

Q. Do you recollect what passed between you and him at that time?

A. We talked together. I told him of my suspicions and everything else. He told me he thought it was Atzerodt who had assassinated the Secretary of State. We then went round to breakfast.

Q. Is that all that passed, as well as you can recollect?

A. That is all I recollect.

Q. Then when you went to breakfast, you said you intended to go out and disclose all you knew about it?

A. I said I intended to tell all I knew, but I did not say I intended to disclose anything, because I did not know anything of this murder.

Q. You are confident you said at the breakfast table what you have stated here you did?

A. Yes, sir; and Mrs. Holahan and Mrs. Surratt heard me.

Q. Mrs. Hollahan, Mr. Holahan, Miss Jenkins, and Miss Dean were all there?

A. I do not know whether Miss Dean was there or not; I know Anna Surratt was there, and I know very well, too, what remark was made there.

Mr. BRADLEY. Bolt it out.

WITNESS. That the death of Abraham Lincoln was no more than the death of a negro in the army.

Q. Did you tell that down at the commission trial?

A. No, sir. Mrs. Surratt did not say that; somebody else said it. Somebody at the table said it in her presence.

Q. I thought you said Miss Anna Surratt said it?

A. I know very well what she said.

Q. Who said?

A. Miss Anna Surratt. I know very well what was said; (after a slight pause,) she, Miss Anna Surratt, did say it.

Q. You never thought to tell that before?

A. No, sir; because I had too much sympathy for the poor girl.

Q. Why do you tell it now?

A. Because you bring it out.

Q. Did I bring out your "voluntary" statement?

A. I have told it because I have been hunted down and persecuted on account of these very people.

Q. Isn't it your impression that if John Surratt is acquitted you will be hunted down a little harder?

A. O, I am not afraid of being hunted down.

Q. Do you know Mr. Lewis Carland?

A. Slightly.

Q. Do you recollect of having a conversation with him on the subject of your testimony, and your knowledge in regard to this alleged conspiracy?

A. I had several talks with him.

Q. Where?

A. In the city here, on the street.

Q. Do you remember a conversation with him when Mr. John Brophy was present?

A. Yes, sir; right in front of his house. I remember that I saw Mr. Brophy, and Mr. Carland was in my company at the time, but I do not remember what passed.

Q. Do you recollect of stating in that conversation, or in any other with Mr. Carland or Mr. Brophy, that if Captain Gleason had not betrayed you, you never would have said a word about this matter?

A. No, sir.

Q. Have you seen an affidavit made by Mr. Brophy, before Mr. Callan?

A. Yes, sir; I saw it two years ago. Mr. Gleason never went to the War Department until about ten days after I had first given the information.

Q. About three, perhaps four, weeks before the assassination—at all events after this horseback ride of which you have spoken—I want to know what you said to Mr. Carland or to Mr. Brophy?

A. I will just tell you what I did say.

Mr. BRADLEY. I do not want you to go back and tell the facts in your way, but what you said.

A. I do not remember.

Q. I thought you said you would tell me what you did say. Can you tell me what you did say?

WITNESS. To whom?

Mr. BRADLEY. To Mr. Brophy or to Mr. Carland, or to both.

WITNESS. I was just going to tell the narrative.

Mr. BRADLEY. I do not want the narrative, but only what you stated.

A. I cannot tell it in any other way.

Q. You cannot state what you said to either of them?

A. I cannot say that I said that Mr. Gleason betrayed me, because Mr. Gleason never did betray me.

Q. I do not ask you that, but I ask what you did say to either or both of them?

A. I do not remember saying anything of the kind.

Q. Did you state to either of them that you were not willing to return from Canada, but the detectives had you in charge, and you were compelled to come back?

A. Not that I remember.

Q. Are you positive you did not tell Mr. Lewis Carland so?

A. I am.

Q. Or Mr. Brophy?

A. Yes, sir. Mr. Bradley, that is simply an absurdity, and before you get through with this trial you will be satisfied it is an absurdity.

Mr. BRADLEY. Suppose you let counsel on the other side take care of that. At present we want the facts.

Q. Did you tell Mr. Brophy or Mr. Carland, or either of them, that on one occasion Mrs. Surratt called her son aside, in your presence, and said to him, "John, I am afraid there is something going on. Why do these men come here? Now, John, I do not feel easy about this, and you must tell me what you are about."

A. Yes, sir; I told them shortly after Booth and Atzerodt commenced coming to the house, that Mrs. Surratt was very much exercised about their coming there. I did hear her say, "John, what are these men doing here? What business have they with you?" or something to that effect. And she stated to me that she would know what John had to do with it, and she took John into the parlor and closed the door. Whether John disclosed his business or not I do not know. I afterwards asked her what business John was engaged in, and she said he told her he was engaged in cotton speculations.

Q. Didn't they ask you if John told her, and didn't you reply that he did not and would not tell her?

A. No, sir; I do not remember to have made that reply.

Q. Was anything said between you and Howell, the blockade runner, about your going to Richmond?

A. I said I would like to go to Richmond for the purpose of continuing my theological studies. I would have crossed the river for that purpose.

Q. Is there any college there?

A. No, sir; it was not necessary to have a college there; I could have studied in a bishop's house. I was so anxious ever since leaving college to go on with my studies that I would, as I have before stated, have crossed the river for the purpose. Even for that purpose I sent two letters by a flag of truce boat to Bishop McGill during the war, and I received an answer to one of them January 15, 1865.

Q. You were very anxious to go to Richmond?

A. Yes, sir, for that purpose.

Q. And you were at the same time talking with Howell about how you could get across. Didn't you tell him all your sympathies were with the South?

A. O, I have talked secesh very often in my life for buncombe, especially with such men as Mr. Howell.

Q. And associated with him, Atzerodt, Booth, John Surratt? I believe you say you scarcely knew Payne?

A. I never had much to say to Payne; I have detailed here all the conversation I ever had with him; I never visited him at the Herndon House. Anybody, before the assassination, would have been glad to have associated with Mr. Booth.

Q. Why?

A. Because he was in such respectable society; he was such an elegant and polished gentleman.

Q. What do you mean by "such respectable society?"

A. Well, members of Congress.

Q. You have not put him with anybody except these people?

A. O, yes, sir; I have seen him in company with John McCullough and members of Congress.

Q. McCullough is an actor also, isn't he?

A. Yes, sir.

Q. Who else did you ever see him associating with? Did you ever see him in the society of ladies outside of Mrs. Surratt's house?

A. No, sir, not that I remember of; I knew he was courting a lady here.

Mr. PIERREPONT. I submit to your honor that this is not right in any shape; that it is neither legal nor proper.

The COURT. I do not see that there is any relevancy in the testimony. I would be very glad, Mr. Bradley, if you could shorten these examinations as much as possible.

Mr. BRADLEY. I shall endeavor to shorten the examination, sir, as much as possible; but the great extent of ground covered by this witness in his two examinations renders it necessary for me to travel over rather a wide range. I have sought, up to this moment, to confine myself to questions strictly relevant and proper.

The COURT. Proceed with the examination.

Q. Were you confined in the Old Capitol with Mr. Holahan, or any one else?

A. I was confined in Carroll prison, with about thirty or forty bounty jumpers.

Q. Was Mr. Holahan one of them?

A. No, sir; I did not say he was; but he was a bounty broker.

Q. I will ask you whether you were with him?

A. Part of the time I was, and part of the time I was not. When I was first there he was put in solitary confinement.

Q. I ask you whether you were confined in the same room with him?

A. At first I was not confined in the same room.

Q. Were you confined with him at all in Carroll prison?

A. Yes, sir.

Q. How long were you confined with him there?

A. I was confined there thirty days; I think he got out before I did.

The court here took a recess of half an hour.

AFTERNOON SESSION.

LOUIS J. WEICHMANN—examination resumed:

By Mr. BRADLEY:

Q. When the court took a recess I had just asked you some questions about Mr. Carland and Mr. Brophy. I want you to state whether, after the conspiracy trials, you had a conversation with Mr. Carland in reference to testimony you had given on that trial?

A I had several conversations with him.

Q. Do you remember going with him one evening to St. Aloysius church, and sitting on the steps of the church, and having a conversation with him in reference to the testimony you had given.

A. I do not remember any particular evening; as I said, we had several conversations, and talked this whole thing over.

Q Since the court took a recess have you seen Mr. Carland?

A I merely shook hands with him.

Q Is that all that passed?

A. I remarked to him, "Old fellow, I see you are going to be a witness against me. Go ahead." He told me he could not help it; it was his duty.

Q. Do you recollect going with him to Dubant's saloon on one of these occasions?

A. I do not know where Dubant's saloon is.

Q. Did you ever go with him to a saloon on the corner of Sixth street and Pennsylvania avenue?

A. Not that I remember.

Q. Did you ever take a walk with him and Mr. Brophy?

A. No, sir. I once met him at Mr. Brophy's house.

Q. Do you remember stating to Mr. Carland, in the course of your interviews with him about that time, that your conscience was greatly troubled about the testimony you had given on that trial?

A. No, sir; I do not remember anything of the kind.

Q. Either in substance or effect?

A. No, sir.

Q. You do not remember saying to him that you were going to confession to relieve you conscience?

A. No, sir.

Q. Do you remember of his saying to you, "That's not the right way, Mr. Weichmann;" you had better go to a magistrate and make a statement under oath?

A. I do not remember that.

Q. Do you remember replying to him, "I would take that course if I were not afraid of being indicted for perjury?"

A Not at all

Q. Do you remember stating to him that the testimony you had given was prepared for you, written out for you, and that when you awoke in the morning you were told that you must swear to the substance of that paper?

A. Pshaw! No, sir.

Q. You do not remember of his telling you then that you ought to go to a magistrate and make a statement of the facts as they really occurred?

A. No, sir.

Q. Do you remember telling him that you were obliged to swear to that statement or you would be threatened with prosecution for perjury, or threatened to be charged as one of the conspirators?

A. No, sir.

Q. Nothing of the kind ever occurred?

A. No, sir. I did want to go to confession at that time.

Mr. BRADLEY. Never mind what you wanted to do at that time. I want to know what was said.

WITNESS. I do not remember anything of the kind. These questions look so silly to me that I almost hate to answer them; I never heard of such things before.

Mr. BRADLEY. We will see about that. I do not want to enter into a discussion just now.

Q. Do you remember about a man being in your room with you at Carroll prison, and his stating to you that you had made these confessions or statements in your sleep, and that he had written them down?

A. No, sir; nothing of the kind ever occurred.

Q. You know Mr. Lewis Carland?

A. Slightly.

Q. And had talks with him?

A. Two or three times.

Q. Had conversations with him about that time, after the conspiracy trial?

A. Yes, sir; but I do not remember anything of the conversation that you have stated, and I swear positively, on my solemn oath, that I never said anything of the kind. I will put my word against the whole world in the matter.

Q. Did you not state to him that you would have given very different testimony if it had not been for that which was written down for you?

A. No, sir.

Q. Did you not tell him that you could have given an explanation of Mrs. Surratt's visit to Surrattsville on the 14th of April which would have been greatly in her favor, if you had been allowed to?

A. No, sir; I said nothing of the kind.

Q. Do you remember or not that on the day you visited Mr. John Brophy's, or any other day, you met Father Wiget at St. Aloysius church, when you were with Mr. Carland?

A. I met him several times.

Q. I mean when with Mr. Lewis Carland?

A. No, sir; I do not remember that I saw Father Wiget when with Mr. Carland at any time.

Q. You do not remember then, when you were walking with Mr. Carland, of stopping some time on the steps of St. Aloysius church, and Father Wiget coming up and saying to you that he had been on an excursion of the Sabbath school, and that one of the children had fallen overboard, but had been rescued by a man jumping in after him?

A. No, sir; I do not remember of ever having seen Mr. Carland and Father Wiget together.

Q. Then, as I understand you, you do not recollect any walk with Mr. Carland in which you spoke of the testimony you had given on the trial of the conspirators?

A. I spoke about my testimony, because that was uppermost in my mind.

Q. Do you remember saying anything about suicide?

A. No, sir.

Q. Do you remember reciting portions of Hamlet?

A. O, I have done that.

Q. I am talking now of what was said and done in your conversations with Mr. Carland at that time.

A. No, sir; I do not remember, on any such occasion of reciting portions of Hamlet.

Q. In regard to suicide or self-destruction?

WITNESS. What, "To be, or not to be?"

Mr. BRADLEY. I do not ask what it was. I ask you whether you had a talk on the subject of suicide with Mr. Carland.

A. O, I might have had; I do not care whether I did or not.

Q Do you remember of more than once taking out a revolver and showing it to him, and talking about self-destruction?

A. No, sir; I do not remember anything of the kind. It is the first time I have heard of it.

Q. Do you say now positively that on one of these occasions when you were telling Mr. Carland about your testimony, you did not recite to him passages from Hamlet on self-murder?

A. I do not say that I did not. I say I do not remember of doing so. I have recited that same passage over two hundred times, and I might have taken out a revolver, and might have also looked down its barrels.

Q. When you were with him?

A. I might have done so. I carried a revolver at that time.

Q. But not with a view of self-destruction?

A. No, sir; I am too much of a coward for that.

Q. Now I understand you to say positively that you never did tell Mr. Carland that you were going to confession to ease your conscience about the testimony that you had given on that trial at the arsenal.

A. I will tell you all about that confession matter.

Mr. BRADLEY. You know the question I asked?

A. I do not remember to have said anything to Mr. Carland about confession at all.

Q. You deny stating to Mr. Carland that your testimony before the commission would have been very different if it had not been written down for you?

A. Yes, sir

Q. You deny that Mr. Carland advised you to go to the magistrate?

A. I denied all that once before, and I deny it over again.

Mr. BRADLEY. My colleagues think it is important for me to follow this matter one step further.

Q. I wish to ask you if you did not state to Mr. Carland that, on the 14th of April, 1865, before Mrs. Surratt went to Surrattsville, when she spoke to you about getting a buggy, you did not advise her to send to Booth, and if she did not reply that she did not know that Booth was in town?

A. No, sir.

Q. I wish to ask you further whether you did not tell Mr. Carland, when you reached Surrattsville, of Mrs. Surratt having informed you that she was going to see Mr. Nothey on business, having received a letter from Mr. Calvert requiring immediate attention; that when you found Mr. Nothey was not there that you met Mr. Jenkins; that you and Mrs. Surratt turned round to come home and then the spring of the buggy was broken?

A. No, sir. I believe I did meet Mr. Jenkins on the road toward home—I do not know whether we met him at Surrattsville—and that Mrs. Surratt said, "What do you think of our army now? Our army has surrendered"—meaning the Union army.

Q. You told Mr. Carland that, did you?

A. I do not know that I did?

Q. I want to know what you told Mr. Carland?

A. I told Mr. Carland nothing at all about breaking the spring of the buggy.

Q. Did you tell him what I stated?

A. I deny that I said so.

By Mr. PIERREPONT:

Q. Just as the court adjourned, you spoke of having been thirty days in Carroll prison, about which you have been asked several times; what did that mean?

A. I was there as a government witness.

Q. Were you there for any crime?

A. No, sir.

Q. Was that all you were there for?

A. Yes, sir; that was all.

Q. Will you look at this order and see if it is the order under which you were appointed one of the special officers to go in pursuit of the assassins? (Order shown to witness.)

A. Yes, sir; that is a copy of the official order which was sent to me. The

original order is in McDevitt's possession. This copy is certified to by Captain Russell and others.

The order, after being exhibited to court and counsel, was read and placed in evidence, as follows:

[Special Orders No. 68.—Extract.]

HEADQUARTERS DEPARTMENT OF WASHINGTON,
OFFICE PROVOST MARSHAL, DEPARTMENT NORTH OF POTOMAC,
April 16, 1865.

Special Officers James A. McDevitt, George Hollahan, and Louis J. Weichmann, are hereby ordered to proceed to New York city on important government business, and after executing their private orders, return to this city and report at these headquarters.

The quartermaster's department will furnish the necessary transportation.

By command of Major General Augur:

T. INGRAHAM,
Colonel and Provost Marshal General, Department north of Potomac.

Official:

G. B. RUSSELL,
Captain and Assistant Provost Marshal General.

Q. You said on your cross-examination that at some time—you have not given the time—Miss Surratt said in the presence of Mrs. Surratt, that the death of Lincoln was of no more importance than that of any nigger in the army. Will you state the time?

Question objected to by Mr. Bradley on the ground the witness had already stated the precise time.

Mr. PIERREPONT did not so understand it.

The COURT said the witness had already stated the time, but if counsel had not understood him to state it, they were entitled again to have the question answered.

WITNESS. It was on the 15th of April, and in the presence of Mr. Hollahan, Mrs. Hollahan, myself, and Miss Fitzpatrick, that she said the death of Abraham Lincoln was no more than the death of any nigger in the army.

Mr. BRADLEY desired an exception noted to the reception of this evidence.

Q. Will you state what there is about this confession you have been asked about.

Question objected to by Mr. Bradley, as not having been called for by anything on cross-examination.

The COURT said he understood the confession to have been stated in the conversation with Mr. Carland which was brought out on cross-examination. The witness could be asked to state that entire conversation.

WITNESS. I never spoke to Mr. Carland at all about the confession.

Q. Then I will ask you about Brophy. Was there anything in your conversation with him connected with this confession?

A. No, sir.

Q. Was there anything about this confession in what was said by you to either of these men?

(Question objected to by Mr. Merrick.

Objection overruled.)

A. Nothing at all. I deny that I ever said anything to them about confession at all. I did not go to confession either.

The examination of the witness here closed.

Mrs. MARY BENSON recalled and examined by the district attorney.

Q. I omitted to ask one question in your examination; be good enough to

examine this photograph, (photograph of Booth exhibited,) and state to the jury whether it resembles the person you saw on the Third avenue car on the occasion to which you referred?

A. There is a resemblance both in the face and head.

Q. That person was disguised you say in the manner you have described?

A. Yes, sir.

Cross-examined by Mr. BRADLEY.

Q. Be good enough to state, for I may have misunderstood you in reference to the hand of that person, whether your attention was in any way directed to that?

A. It was.

Q. Describe to the jury what was the particular thing that attracted your attention?

A. He had a very small white hand.

Q. Contrasting at all with his complexion?

A. Yes, sir.

Q. Much lighter?

A. Yes, sir; much lighter than the front of his face which was apparently stained.

Q. His hands attracted your attention; did they look as if they had been used in labor at all?

A. They did not.

Q. Was it so small, delicate a hand as to particularly attract your attention?

A. It was the hand of a gentleman; a very small white hand. I suppose I noticed him particularly, seeing that he was disguised.

Q. And was that delicate hand what led you first to notice the other features?

A. I noticed the disguise first and then I noticed him more particularly.

Q. Do you recollect if he wore gloves at all?

A. He had a gauntlet glove on the other hand.

Q. Which hand was exposed?

A. The right hand.

Q. A remarkably small, delicate hand?

A. Yes, sir.

The district attorney stated that he desired to call Dr. McMillan as the next witness.

Mr. BRADLEY said they had sent a subpœna *duces tecum* to the Secretary of State, to which no response had been made. A response had been received from Mr. Frederick Seward. He desired the original document before proceeding to the cross-examination of this witness.

Mr. PIERREPONT stated that the Secretary of State had been out of town; that he had received a printed leaf from the Assistant Secretary of State, the Assistant Secretary stating that it was in response to a communication from the counsel.

Mr. BRADLEY said they were entitled to a return to be made by the Secretary to the court.

Mr. PIERREPONT said the examination of the witness in chief would not be concluded to-day, and proposed therefore to proceed.

LEWIS J. A. MCMILLAN, surgeon, sworn and examined.

By Mr. PIERREPONT:

Q. In what service are you?

A. I am out of service now. I was in the Montreal ocean steamship service two years ago.

Q. What ship were you connected with?

A. From April till October, 1865, I was surgeon of the steamship Peruvian.

Q. When did you make your first autumn voyage from Montreal to Liverpool in that year?

A. I left Quebec on the 16th of September, 1865, for Liverpool.

Q. Do you remember whether you stopped at Ireland?

A. We did.

Q. Can you give the date when you reached Ireland, and the date when you reached Liverpool?

A. We left, as I said before, Quebec on the 16th, which was Saturday. On Sunday week we arrived at Londonderry, Ireland, and the next day, Monday, about 8 or 9 o'clock in the evening, at Liverpool.

Q. At what time in the day or night did you land at Londonderry, Ireland?

A. It was between 12 o'clock Sunday night and one o'clock Monday morning.

Q. Do you know this prisoner at the bar?

A. I do.

Q. Did he cross with you on that voyage to Londonderry?

A. He did.

Q. Will you tell us when, where, and how you first saw the prisoner? Relate to the jury just what happened.

A. I first saw the prisoner on the mail steamer Montreal, running from Montreal to Quebec, on the 15th of September, 1865.

Q. How did he happen to come to you? What occurred that brought him?

A. About a week or ten days previous, I had met in one of the streets of the city of Montreal—

Mr. BRADLEY interrupting witness, objected to his stating what any one else said.

Mr. PIERREPONT said that was precisely what he proposed to prove, and that, in consequence, the prisoner was brought to witness.

The COURT decided witness might state that in consequence of information received from a third party the prisoner was brought to witness.

Q. I understand you that a week or ten days previous, somebody came to you. Who was that somebody?

A. His name is La Pierre.

Q. What or who is he?

A. He is a priest.

Q. Where does he live?

A. I do not know where he lives now. He lived in Montreal then. I understand he has left the city.

Q. Did he say anything about Surratt?

A. Yes, sir, he said——

Mr. BRADLEY. You need not state what he said.

Mr. PIERREPONT. Well, he said something in relation to somebody?

A. Yes; that somebody was going. I was going on the 15th of September to join my ship. On the steamer Montreal I met this Mr. La Pierre again, by agreement. He said to me that he would give me an introduction to his friend.

Q. Did he introduce him?

A. He brought me up to a state room, of which he had the key.

Q. Who had the key?

A. La Pierre.

Q. State whether it was locked.

A. It was. He unlocked the door, and in the room I found the prisoner at the bar.

Q. Was that the first time you had seen him, when the door was unlocked?

A. The first time.

Q. What did he say, in the presence of the prisoner?

A. He introduced the prisoner to me under the name of McCarty, the friend to whom he had referred before. I never suspected who the gentleman was,

and consequently I passed the evening and most of the night with him and a third party besides the priest.

Q. Will you tell the jury, when you went into that room and found the prisoner, what was the condition of his hair?

A. His hair was then short.

Q. What was its color?

A. A dark brown, I should say.

Q. Was it dyed, or natural?

A. I did not perceive that night that it was dyed. I afterwards found it out.

Q. What was the conversation about that evening?

A. I do not remember; it was a general conversation.

Q. Did La Pierre go on with you down to Quebec?

A. He came all the way down to Quebec.

Q. When did you reach Quebec?

A. I should say between five and six o'clock, Saturday morning.

Q. Do you know whether La Pierre slept in this same room?

A. I could not say.

Q. Do you know whether the prisoner went out of the room that night?

A. I believe we went down once to the bar-room.

Q. At what time in the night?

A. I do not know; I suppose ten or eleven o'clock. I could not tell you the time.

Q. When you got to Quebec what happened?

A. I believe we had breakfast on board the steamer in the morning, probably at seven or eight o'clock. Between nine and ten the company sent a tug to take the passengers and their luggage on board the steamer Peruvian. We all went on board.

Q. What occurred about the room; how was it arranged on the steamer for the prisoner?

A. After we arrived on board, La Pierre says to me——

The COURT. Was it in the presence of Surratt?

WITNESS. I believe so, sir. He said he wished me to let the prisoner remain in my room until the steamer had left. I did so; I got the key of my room, let him in, and went with him.

Q. Did he occupy it until the steamer had left?

A. He did.

Q When did the steamer leave?

A. Within a very few minutes; perhaps twenty minutes or half an hour.

Q. Where did La Pierre go then?

A. He went back on shore.

Q. Did you see any more of the prisoner that night?

A. Yes, I saw him again.

Q. Where did you see him? In your room?

A. I may have seen him in my room, but I do not recollect. I remember that while there, after lunch or after dinner, (lunch was at twelve and dinner at four.) the prisoner came to me, and pointing to one of the passengers, asked me if I knew who the gentleman was. I told him I did not; that I supposed he was a passenger as he was himself; that that was all I knew about the man. He then said he thought the man was an American detective, and that he thought he was after himself. I said I did not believe anything of the kind, and that I did not see why he should be afraid of an American detective. I said to him, "What have you done that you should be afraid of an American detective?" He said that he had done more things than I was aware of, and that very likely, if I knew, it would make me stare, or something to that effect.

Q. In this connection, what act did he do, if any?

A. I said that he need not be afraid of an American detective; that he was on

board a British ship, in British waters, and that if an American detective had been after him, he would have tried to arrest him before he left port. He said that he did not care whether he was or not; that if he tried to arrest him this would settle him—and in saying that, he put his hand into his waistcoat pocket, and drew a small four-barrelled revolver.

Q. Did any other parties go down on that boat before you took the steamer?

A. There were a great many; I could not tell you how many.

Q. Were there any whose names were given to you?

A. Yes.

Mr. BRADLEY. That was on the steamer Montreal.

WITNESS. That was on the tug from the steamer Montreal to the steamer Peruvian.

Mr. BRADLEY said that, without explanation, his testimony did not seem to be relevant.

The COURT said it was not relevant, unless the parties named were connected with the prisoner at the bar.

Mr. PIERREPONT said he proposed to show that Beverley Tucker and General Ripley were among these gentlemen; that he supposed he had the right to show every person on board this tug going with Surratt to the steamer that morning.

Mr. BRADLEY said the parties named were not known to the court or jury in connection with this conspiracy; that the evidence in chief must be pertinent to the issue, and he submitted that this was not admissible.

Mr. PIERREPONT said he had the right to show who these men were who were talking to Surratt, or anybody else who was on the steamer with the prisoner.

The COURT decided that the witness might be asked in relation to any conversation of any party with the prisoner.

Mr. BRADLEY said he had no objection to that.

Q. Now state what men on board that tug you saw speak with Surratt.

A. On the tug I saw nobody talk to the prisoner.

Q. On any of the boats?

A. During the passage I saw the prisoner a few times in conversation with General Ripley.

By Mr. BRADLEY:

Q. What passage?

A. The passage from Quebec to Liverpool.

By Mr. PIERREPONT:

Q. Do you know who General Ripley was?

A. I suppose I can say what he said he was.

Mr. BRADLEY objected that it was not a competent mode of showing who the witness was.

The COURT decided that if it could be brought to the knowledge of Surratt that Surratt knew who he was that would be evidence.

Mr. PIERREPONT said that was what he was trying to do, to show who this gentleman told Surratt he was.

WITNESS. The prisoner at the bar told me afterwards that General Ripley was a general in the rebel army.

Mr. BRADLEY. That you have not been asked about.

Mr. PIERREPONT. It would have been the next question.

Mr. BRADLEY. Now take the question the witness has put into your mouth.

Mr. PIERREPONT said he would take his own question.

Q. Do you know who General Ripley was?

Mr. BRADLEY. Of your own knowledge?

WITNESS. Of my own knowledge, I do not know who the prisoner was.

The DISTRICT ATTORNEY. Or from what the prisoner told you?

WITNESS. The prisoner told me he was General Ripley, of South Carolina.

By Mr. PIERREPONT:

Q. Now, sir, did the prisoner tell you who any of the other men were?

A. No. I believe he knew nobody else on board.

Q. Did you know any other man?

Mr. MERRICK. Of your own knowledge?

A. Yes.

Mr. BRADLEY. Any one who was in conversation with Surratt?

WITNESS. O, I cannot say who may have been in conversation with him during that ten days. He may have been in conversation with all on board the ship.

Mr. BRADLEY. You did not see him converse with any one else?

WITNESS. I suppose I may state that I knew one man personally.

Mr. PIERREPONT. Yes.

Mr. BRADLEY objected.

Mr. PIERREPONT said it was competent to prove the name of every passenger on board the ship in which the prisoner was.

Objection overruled.

WITNESS. There was among the passengers William Cornell Jewett.

Mr. MERRICK. Otherwise known as "Colorado"?

WITNESS. Yes, sir; the very man.

Q Who else?

A. There was also a colored man who had been in the service of Jefferson Davis.

Mr. MERRICK. How do you know that?

WITNESS. He told me so himself.

By the DISTRICT ATTORNEY:

Q. Did you hear the prisoner speak of him?

A. No, sir; the prisoner did not know any one else. This man told me so himself.

By Mr. PIERREPONT:

Q. Did you know Beverley Tucker?

A. Only from having been introduced to him on that morning of the 16th of September.

Mr. BRADLEY inquired if it was proposed to connect him with the prisoner.

Mr. PIERREPONT. That is just what I am trying to bring about. (To witness:) Who introduced you to Beverley Tucker?

(Question objected to unless Beverley Tucker is connected with the prisoner. Objection sustained.)

Q. Will you tell us where you saw Beverley Tucker on that day?

Question objected to by Mr. Bradley. Objection overruled.

A. I met him on the tug going from the steamer Montreal to the steamer Peruvian.

Q. Will you state whether he went on board the Peruvian?

A. He did go on the Peruvian, but not to cross.

Q. I believe you stated that the prisoner went by the name of McCarty?

A. McCarty; yes, sir.

Q. When did you sail?

A. I should think about ten in the morning; I cannot say positively. I know the steamers were in the habit of sailing between nine and ten.

Q. When morning came did you notice more particularly the prisoner's moustache and hair?

A. After I got on board the steamer I perceived that his hair had been dyed.

Q. How about his moustache?

A. And also his moustache; it was very thin.

By the DISTRICT ATTORNEY:

Q. What color?

A. Dark brown.

By Mr. PIERREPONT:

Q. What did he wear, if anything, upon his eyes?

A. He wore a pair of spectacles.

Q. What did he tell you about the spectacles he wore and about his hair?

A. I do not remember that he said anything about his hair. I remember his saying that he did not wear spectacles because he was short-sighted, but because they aided in disguising him a little.

Q. Did you have any conversation with him after you got on the steamer behind the wheel-house?

A. I had conversations with him every day from the 16th until we arrived at Londonderry; that was about nine days.

Q. Where did these conversations take place?

A. If I remember right, mostly on what is called the quarter-deck, sometimes behind the wheel-house.

Q. Will you tell the jury whether you tried to get to him or whether he seemed to seek you?

Question objected to by Mr. Merrick as leading and improper.

The COURT said witness could be asked how the conversations came to take place.

Q. How did it come to pass? Did you seek to go to him or did he seek to come to you?

Question objected to by Mr. Merrick for same reason as last.

Objection overruled.

Q. Will you state what he said to you about the beginning in relation to a trip to Richmond? As I cannot give it all at once, I will ask you to begin with that.

Mr. BRADLEY asked that the witness should be required to go on in narrative form, and state what he knew in relation to the matter.

The COURT said that was the regular course, but witness was interrupted to wait for counsel to write down the testimony, and it was sometimes necessary to enable him to take up the thread of his narrative to interpose questions.

Mr. PIERREPONT remarked that it was also necessary from the fact that the general question called for conversations running through nine successive days; it was necessary to refer to particular subjects.

The COURT decided that counsel might proceed, being careful not to put leading questions.

Question repeated.

A. I remember his saying to me that he had been in the habit for some time during the rebellion of going to Richmond with despatches, and bringing despatches back to this city, and also to Montreal.

Q. Did he tell you what male or female went with him?

Question objected to by Mr. Merrick. The only regular proceeding was to allow the witness to go on and give in narrative form what was said, and not be interrupted by questions.

The COURT said he would so direct if counsel did not themselves interrupt witness, to enable them to write down his testimony.

Q. Will you tell us what he said about a male or female who went with him?

Question objected to as leading.

Objection sustained by the court.

Mr. PIERREPONT. I have no objection to the witness being allowed to go on in narrative form, if the counsel will not cut it up by interruptions.

WITNESS. I remember his stating that he at one time was told in Montreal that he would meet a lady in New York.

Counsel for defence again asked witness to suspend to enable him to write down what he had said.

The COURT said that counsel must take either one course or the other. They must not interrupt the narrative for this purpose, or they must allow the witness to be directed by questions after each interruption.

Witness proceeded—that he met the woman in New York; he came on to Washington with her; from Washington he started on the way to Richmond with her and four or five others; that after a great deal of trouble they managed to cross the Potomac; that after they got south of Fredericksburg they were driven on a platform-car drawn, or pushed, by negroes. As they were drawn along they saw some men coming towards them—five or six if I recollect right. They ascertained that these men were Union prisoners, or Union soldiers escaped from southern prisons; they were, he said, nearly starved to death; that this woman who was with them said, "Let's shoot the damned Yankee soldiers." She had hardly said the word when they all drew their revolvers and shot them, and went right along, paying no more attention to them.

By the DISTRICT ATTORNEY:

Q. How many?

A. Five or six; I could not say certainly; it was not more than six.

By Mr. PIERREPONT:

Q. Did he say what they did with the dead bodies?

A. No; he said they went along.

Q. Did he tell you the name of this woman?

A. He did, but I forget at this distance of time. I could not positively state who she was.

Q. Would you know the name if you were to hear it?

A. I would not like to say now what name it was.

Q. Do you know the letter of the alphabet it commenced with?

A. I could not say.

Q. Was the name Mrs. Slater?

A. It sounds like it, but I would not be positive that it is. The woman's name was very conspicuous in Montreal during the trial of the St. Albans raiders.

Q. Conspicuous as what?

A. As one of those who went to Richmond to help the raiders in their trial.

Q. What did he say to you about whether these men had or had not any arms?

Question objected to by Mr. Bradley as irrelevant and as leading.

Objection overruled.

Mr. BRADLEY desired an exception to the ruling to be noted.

Q. What further did he say about the condition of these men?

A. I understood him to say they were in a very miserable way; that they had been obliged to hide themselves in swamps and other places, and I understood him to say they were almost dead.

Q. What as to arms?

A. I do not recollect whether he said anything as to whether they were armed or not.

Q. Was there anything said about money in this connection?

A. Yes.

Q. What was that?

A. He told me he had received money in Richmond from the Secretary of State, Benjamin, several times.

Q. Did he tell you how much?

A. I remember two amounts, $30,000 and $70,000. I do not remember at what times he received them; he stated particular times. I remember these amounts.

Q. Did he tell you the dates when he reached Montreal from Richmond?

A. I do not remember that he did. All I remember about that is that he was in Richmond a few days previous to its fall; that is to say, in the week immediately previous.

Q. Did he give you any account of crossing the Potomac at that time? If so, state it.

Mr. BRADLEY desired it to be noted that all this testimony came in subject to his exception.

WITNESS, continuing. I remember his stating one day that there were several of them crossing the Potomac in a boat—it was in the evening, I believe—when they were perceived by a gunboat and hailed. They were ordered to surrender, or else they would be fired upon. They immediately said they would surrender. The gunboat sent a small boat to them; that they waited until the gunboat came immediately alongside of them, then fired right into them, and escaped to the shore.

Mr. MERRICK. The gunboat fired into them, or they fired into the gunboat?

WITNESS said he would tell the counsel, and, if he was not deaf, he could hear, and repeated his answer, adding that Mr. Merrick had insulted witnesses the other day, and that it was the act of a coward and sneak.

The COURT cautioned the witness that such language was not becoming, but also remarked that it was not becoming in counsel to try to worry witnesses into a bad temper.

WITNESS stated that Mr. Merrick had remarked the other day that all the witnesses in the adjoining room ought to go to the penitentiary, or something to that effect; that he was just as good as Mr. Merrick.

Q. What do you know about a telegraph communication down there discovered by these parties?

A. I remember one day he said that he was with a regiment of rebel soldiers one evening; that after sunset he and some others went into an orchard or garden, close by, to pick some fruit; that while sitting on the ground they heard the ticking of a telegraph, or what they supposed to be a telegraphic machine; that they went down to the headquarters of the regiment and reported the fact; that the party in command ordered some soldiers to go to the house connected with the orchard and search it; that in the garret of the house, in a closet, they found a Union soldier; that they found he had an underground wire, and was working a telegraph. They took him down, and shot him or hung him, I forget which.

Q. In passing between Richmond, Washington, and Montreal, did he state anything of the names he took? and if so, give them.

A. I remember he travelled under the names of Harrison, Sherman, and some others I forget.

Q. You have named two specific sums. What further did he say in regard to his having received money from Richmond?

A. He told me so many things that I cannot recollect, at this distance of time, everything he said. All I can say is he repeatedly told me he received money from Richmond. The only two sums I remember of are thirty thousand and seventy thousand dollars.

Q. Will you give us his conversation in reference to landing in England, as connected with our government in any way?

A. I remember the last day he was on board, which was Sunday afternoon, after tea he came to me on the quarter-deck, and said he wished to speak to me. I went with him behind the wheel-house. He repeated to me many things he had already said before, parts of which I have stated here, and the others I do

not recollect. After talking a long time in this way, he said, pointing to the coast of Ireland, in sight of which we were then sailing, "Here is a foreign land at last. Then," said he, "I hope I shall be able to return to my country in two years. I hope to God," at the same time holding a revolver in his hand, "I shall live to see the time when I can serve Andrew Johnson as Abraham Lincoln has been served."

Q. Did he say anything about what he would do if an English officer, at the request of the United States, should take him in England?

A. One day, in talking of the mere possibility of his being arrested in England, he said he would shoot the first officer who would lay his hand on him. I remarked that if he did so, he would be shown very little leniency in England. Said he, "I know it, and for that very reason I would do it, because I would rather be hung by an English hangman than by a Yankee one, for I know very well if I go back to the United States I shall swing."

The court took a recess until to-morrow at ten a. m.

TUESDAY, *July* 2, 1867.

The court was opened at 10 o'clock.

Mr. BRADLEY. If your honor please, before we proceed with the trial of this case, I beg leave to call the attention of the court to an incident which occurred just before the adjournment yesterday, and to ask that the notes of the reporter may be read. Your honor was very much occupied at the time, and I desire that the record may be read in order that you may see what passed, and what led to the attack made by the witness upon the stand upon the counsel with whom I am associated. Your honor, without having heard what passed at that time, if not in precise words yet in substance, censured the counsel to whom these observations were addressed. I think, in looking at it, your honor will see that there was no provocation given; and that if there was, it is due to the dignity of this court, and to the protection of the members of the bar, to which they are entitled at the hands of the court, that some notice should be taken of what then passed.

So much of the report of yesterday's proceedings as related to the matter referred to by Mr. Bradley was then read; after which,

The COURT said: I did not hear what was said yesterday by the witness in regard to the gunboats for the reason that I was at the time occupied in preparing some passes for a friend. When my attention was called to the remark made use of by the witness towards the counsel, I was under the impression that he had been provoked to it by something that had been said by the counsel. I cannot, however, perceive in the record which has been read anything which ought to have called forth, or which justifies, the expression of the witness. I will say now to the witness, that although Mr. Merrick did say a few days ago, in regard to the witnesses who were in the adjoining room, (which Mr. Bradley had called a penitentiary,) that they (the witnesses) would soon be in another penitentiary, or words to that effect, it is not the privilege of a witness to take exception in the way he did to any remarks made in the court-room. He may appeal to the court to protect him if he is aggrieved. [Turning to the witness.] You must not hereafter, in your examination, make use of any expressions towards counsel which are at all insulting in their character, however much you may feel yourself aggrieved by remarks which they may have made in reference to witnesses generally, or in reference to yourself before your examination. In this connection it may not be improper to observe that I have never, in all my judicial experience, seen a case in which there has been so much trouble with regard to the examination of witnesses, and so much bitterness of feeling displayed. It may be all right, but I confess I see no reason why it should be so; I cannot, of course, enter into the feelings of counsel, and it is possible they may feel themselves aggrieved, and therefore regard themselves as justified in ex-

hibiting this spirit. I will say, further, that I have never seen witnesses cross-examined with so much asperity as I have in the case now pending. It does not appear to me, therefore, as at all strange that witnesses should be worried into such remarks as this witness has uttered, especially when intimations are publicly thrown out by counsel as to their fitness for the penitentiary, and that, too, when some of the most respectable persons in the land, such, for instance, as General Grant and Assistant Secretary Seward, are among the number. And not even was the effect of the remark allowed to stop with this intimation, but when attention was called to it by the district attorney, in the hope, I presume, that it would be recalled, it was repeated, and with the additional observation that the propriety of the remark could be shown. When such things occur it is not at all surprising that witnesses should come here prepared to avenge themselves by making insulting replies to counsel. I deeply deplore it, and will endeavor, by most carefully observing all that transpires, to prevent a similar recurrence on the part of either counsel or witness; but, however watchful the court may be, such things will occasionally break forth at times and under circumstances when, from not expecting, it is impossible for the court to check them. [Again addressing himself to the witness] Dr. McMillan, you are highly reprehensible for having made any such remark as that to which exception has been taken. It was altogether out of place. If you felt yourself aggrieved by any remark, you should have called on the court for protection. You will now proceed to give your evidence, and in a manner respectful to the counsel. If the counsel on either side shall treat you with what you conceive to be disrespect, you will appeal to the court, and the court will intervene for your protection. I would, however, suggest to gentlemen on both sides that in the examination of witnesses, if they will consult Quintilian and Allison in regard to their duty in this respect, (and no doubt they have read the remarks of both of these authors on the subject,) they will find that those writers say nothing is to be gained by a bitterness of manner toward witnesses either on examination in chief or cross-examination, but that everything may possibly be gained by kindness and conciliatory manners; and I think it would be a decided improvement in this case if their suggestions were accepted. In the course of the five years that I was engaged in prosecuting criminal cases, I do not recollect ever to have had an unkind word with a witness on the one side or the other, and never in a civil case except upon one occasion, when a witness of my own turned against me. Then I was led away by a natural quickness of temper. I advise that we should all, to the best of our ability, endeavor to control our tempers in conducting this case; and then there will be no fear of a repetition of the unpleasant occurrences that have happened during its progress.

Mr. MERRICK. I feel it incumbent upon me to say, after what has fallen from the court, especially as your honor seems to have the impression that I intended my remark to apply to all the witnesses, including Secretary Seward and General Grant, that while your honor misunderstood me in this regard, I do not believe I was misunderstood by some others outside in supposing I intended to embrace all the witnesses in that remark. I will here say that I have the greatest respect for General Grant and Mr. Seward, and I apprehend that among the witnesses in the case it is perfectly well understood to whom the remark referred, and to whom it did not refer. I apprehend that no sane man can suppose that I meant any such reference to General Grant, Mr. Seward, and Mrs. Seward, and that class of witnesses. I will only say in conclusion, that I think, without any further explanation, or more direct pointing of the remark at present, it is perfectly well understood among witnesses to whom the remark referred.

The COURT. I do not know whether it is understood or not. I cannot understand it, because I am bound not to know the witnesses, either as regards their own private character, or the character of their testimony, and I enter into the trial of

this case knowing nothing, as it were, about either, scarcely ever having glanced at the testimony, and, of course, therefore I cannot enter into the feelings of counsel on the subject. I do not know to what witnesses these remarks may be directed, but this I do know, that there are certain legal methods pointed out in the text books of the law by which we are to be guided in undertaking to discredit the testimony of witnesses. One method is the discrediting the witness by himself; by his own contradictions, and his mode and manner of testifying. Another is by proving the witness to be utterly devoid of reputation for truth and veracity, and not to be believed on his oath. Another is by contradicting him by the conflicting testimony of other witnesses. These are the legal modes that are pointed out in the law-books, and any side remarks that are made by way of prejudicing a jury—any acting in the case—the casting of any sinister looks at the jury, are departures from the rules laid down. The examination of a witness ought to be conducted by the witness standing up and the counsel standing up, and looking each other in the face, without the counsel directing his remarks to the jury by turning towards them instead of turning toward the witness. That is the proper way to conduct either an examination in chief or a cross-examination.

Mr. MERRICK. I deem it proper that I should further say, your honor, that the remarks of my learned brother, calling your attention to this matter, were, of course, suggested by himself, and not in the slightest degree at my instance. I did not care at all for what transpired yesterday, in so far as this witness is concerned; but, as a member of the bar, I did feel that the dignity of the court was somewhat infringed upon and somewhat humiliated. In that respect I regretted it, for the witness could not insult me; the insulting language would only reflect upon the dignity of the tribunal before which I was practicing. I deem it proper to say further that what I have just now stated with regard to the pointing of my remark was prompted by your honor's apparent misapprehension of the application of that remark and not by anything that was said by the witness. I think your honor will see the meaning of what I say in the course of the progress of the trial.

LEWIS J. A. MCMILLAN—Examination resumed.

By Mr. PIERREPONT:

Q. I will call your attention to the early part of April—the month of the assassination of the President—and ask you what the prisoner told you on the subject of despatches at that time?

A. All I remember about this is that he said, at the beginning of the week during which the assassination took place, that he was in Montreal; that he had arrived there within a few days, from Richmond, with despatches.

Q. Did he characterize the despatches?

A. I remember that he said they were important despatches for Montreal, which had been intrusted to him in Richmond. What they were I have no knowledge of at all.

Q. Did he say what day of the week of the assassination he was there?

A. He told me that he was there at the beginning of the week of the assassination.

Q. Did he tell you what he received and from whom he received it?

A. He stated that he received a letter from John Wilkes Booth, dated "New York," ordering him immediately to Washington, as it had been necessary to change their plans, and to act promptly.

Q. Did he tell you what he did?

A. He told me that he started immediately on the receipt of the letter.

Q. Did he tell you anything that he did on his way to Washington; and if so, what?

A. The first place he named was Elmira, in the State of New York.

Q. Did he state anything that he did there?

A. He told me that he telegraphed to John Wilkes Booth, in New York.

Q. Did he tell you what he learned?

A. He told me that an answer came back that John Wilkes Booth had already started for Washington.

Q. Did he say anything to you in relation to his own escape?

A. He said that he arrived at St. Albans one morning a few days after the assassination.

Q. What, if anything, did he tell you occurred in St. Albans that morning, a few days after the assassination?

A. He said that the train was delayed there some time, and that he took advantage of it to go into the village to get his breakfast; that while sitting at the public table with several other persons he saw that there was a great deal of talking and excitement among those who were at the same table with him.

Q. Did he tell you what he said?

A. He asked his neighbor what the talk was about. His neighbor said to him, "Why, don't you know that Mr. Lincoln has been assassinated?" The prisoner replied, "Oh, the story is too good to be true."

Q. Did he describe the man with whom he held this conversation?

A. I understood him to say an old man; that is all I remember.

Q. Did he tell you what the man did?

A. The man whom he addressed then handed him a newspaper. He opened the paper, and said that among the names of the assassins he saw his own.

Q. What did he say he then did?

A. He said that it so unnerved him at the moment that he dropped the paper in his seat, and that that was the last of his breakfast for that day.

Q. Did he tell you anything about a handkerchief as he was going out from the breakfast room?

A. He said he got up from the breakfast table, walked into another room, and just as he was about passing from the room he heard a party rushing in, stating that Surratt must have passed, or must then be in St. Albans, as so and so had found his pocket-handkerchief in the street with his name on it.

Q. What then did he say?

A. He said that at the moment, without thinking, he clapped his hands on a courier book, in the outside pocket of which he was always in the habit of carrying his pocket-handkerchief, and that he found out that he had really lost his pocket-handkerchief.

Q. And then what did he tell you?

A. He said that then he thought it was time for him to make himself scarce.

Q. Did he tell you in what way he then made himself scarce?

A. I understood him to say that he made for Canada as soon as possible.

Q. Did he tell you to whose house he went?

A. I remember that he told me that he went to one Mr. Porterfield's, in Montreal.

Q. Did he tell you who he was?

A. He told me Mr. Porterfield was a confederate agent, in Montreal.

Q. What did he tell you as occurring there to himself?

A. He said he staid there a short time; how long I could not say; until, however, they found out that detectives were beginning to suspect that he was in that house, and it was found necessary for him to leave there.

Q. Did he tell you how he left there?

A. He said that one evening two carriages were driven in front of Mr. Porterfield's house, and that he, and another party dressed nearly as he was, came out at the same time, and got one into one carriage, and the other in the other, and drove off, one carriage driving one way and the other in the other.

Q. Will you tell us how he told you he was dressed, and the one who was dressed just like him?

A. I remember his telling me that he wore at that time—I cannot tell whether he had on the same dress that night—what was known in Canada as an Oxford jacket.

Q. Will you describe it?

A. I believe it is what is called in this country a Garibaldi jacket.

Mr. PIERREPONT. Have you the one in court that you produced here the other day?

Mr. BRADLEY No, sir; it is not here.

Mr. PIERREPONT. You may describe it. The jury will remember whether it resembles the other.

A. It was a jacket with a short skirt and a belt around it.

Q. He told you they were both dressed alike in that costume?

A. He said they were both dressed as near alike as could be.

Q. Did he tell you where the two carriages drove to?

A. He told me he was taken to the foot of the island of Montreal, about ten miles, I should say, from Montreal.

Q. Did he tell you anything about the river?

A. The man there had been engaged previously to take him across, and did so in a small canoe during the night. He took him across to the southern shore of the St. Lawrence.

Q. Did he state what sort of a person took him across?

A. I do not remember that he did.

Q. Did he tell you who guided him after he got across?

A. A young lady guided him across the country to a village on the Grand Trunk railroad called San Leben.

Q. Did he tell you how long he staid there?

A. I understood him to say that he staid there some two or three weeks.

Q. Did he tell you in whose house he staid?

A. He said he staid in the house of a priest named Charles Boucher.

Q. Did he state any circumstance connected with his leaving that house; when he left, &c.?

A. In describing the place he said that between the bed-room and the sitting-room there was a hole cut in the partition to put a stove in; that under the stove there was a vacant space about six or eight inches high; that one day while the priest was absent he was lying on the sofa in his bed-room, when one of the female servants, desirous of knowing who was in the priest's house, put her head under the stove so as to see in the room. He saw her face as it came under the stove, and kind of scared her away by jumping suddenly at her.

Q. What occurred after that?

A. The story was immediately circulated around the village that the priest had a woman in his bed-room hiding. Then the priest told him that he could keep him no longer; that he must find other quarters.

Q. What then did he do?

A. He came back to Montreal.

Q. Did he tell you to whom he went?

A. I understood him to say that he went to the man who introduced him to the priest.

Q. Will you state what he related to you in relation to his secretion there?

A. He told me that for four months and a half or so he was secreted in a dark room, from which he never came out except a few times, when he would go out late at night and take a walk.

Q. Will you tell us the physical condition that he was in when you first saw him on the boat?

A. When I first met him the prisoner was very thin, and looked very thin nervous, and careworn.

Q. What was his conduct on the ship in respect to being quiet or otherwise?

Mr. BRADLEY objected to the question as irrelevant. Objection overruled. Exception reserved.

A. His general conduct was gentle. He would, however, show signs of nervousness whenever any one came suddenly behind him. He would turn round and look about as if he expected some one to come upon him at any moment.

Mr. PIERREPONT. I will go down to the last Sunday night before landing. When was it?

A. I know be landed between twelve o'clock on Sunday night and one o'clock on Monday morning.

Q. That Sunday before you came to land—will you state what occurred after day, and the place on the ship where it occurred?

A. I had left the prisoner after the conversation that I related yesterday; I should say it was about half past nine o'clock when I left him. About half past eleven or twelve o'clock I was called out of the room of one of my brother officers by one of my stewards, who stated that a passenger wanted to see me outside. I came out and found the prisoner standing in what is called on steamers or ships the after-square. He was already dressed ready to go ashore. He had previously told me that he had intended to come down with us to Liverpool.

Q. Had he asked any advice of you previously; and if so, what?

A. He asked me what I would advise him to do—to land in Ireland, or come down to Liverpool and land there. I told him I would give him no advice whatever; that he might just do what he pleased, and land where he pleased. He then said, "Well, I believe I will go down to Liverpool with you." I was a little surprised, therefore, when I came into the after-square, and saw him all ready to leave. I said, "Hallo! are you going ashore? I thought you were coming down to Liverpool." He says, "I have thought over the matter, and I believe it is better for me to get out here. It is now dark, and there is less chance of being seen." Says I, "You have been telling me a great many things about what you have done and seen, and I believe the name under which you travel is not your name. Will you please give me your own name?" He looked about to see if there was any one near, and then whispered in my ear, "My name is Surratt."

Q. How long after that did he go ashore?

A. Within twenty or twenty-five minutes

Q. Now describe what occurred before his going ashore, between you, him, and others.

A. He then asked me if he could not get some liquor to drink; that the bar was closed, and he wished to have something to drink before going ashore I told him that I would see the barkeeper, and I had no doubt but he could get some. I called the barkeeper, and he came and opened the bar-room, and the three of us went in—the prisoner, the barkeeper, and myself.

Q. What was his condition when he went to the door?

A. He was nervous; he seemed to be very much excited.

Q. What did he do when he went to the bar?

A. He called for some brandy, and the three of us each had a glass.

Q. Will you tell us exactly what occurred about that brandy?

A. In England and on board ship it is the habit to help any one with the liquor they may want. They never place the decanter before you and tell you to help yourself; but in this instance the barkeeper placed the bottle on the table, and told us to help ourselves. The prisoner took the bottle and poured out a large half-tumbler full of raw brandy.

Q. What next did he do?

A. In a few minutes I asked him if he would not drink with me. He said, "Yes," and we took another about the same.

Q. What next?

A. Within a few minutes afterwards again, the barkeeper says, "It is my turn to treat now," and asked us to take a third glass, and we did so

Q. Did he take the third?

A. He did.

Q. What then did he do?

A. I saw he was becoming rather the worse for his drinking.

Q. What did you do?

A. By that time we had arrived at the place where the mails and passengers are taken off from the steamships. I saw the condition in which the prisoner was, and I told the chief officer at the navy yard it was dark and I was afraid that the prisoner might fall overboard. I said to the chief officer at the gangway, "Will you mind to take this officer by the arm and lead him down?"

Q. Did he do so?

A. He did.

Q. What did you do then with your ship?

A. Turned down and went to Liverpool.

Q. When did you next see the prisoner?

A. I next saw the prisoner on the Wednesday following.

Q. Where?

A. In Birkenhead, at my own boarding-house. Birkenhead is right opposite the city of Liverpool.

Q. Do you know from himself where he went to for concealment, or for any other purpose, in Liverpool?

A. When he came to my house that evening he asked me if I would not go with him over to Liverpool to find a house to which he had been directed and recommended.

Q. Won't you tell the jury where your house was in reference to Liverpool?

A. It is just across from Liverpool. The river is about three quarters of a mile wide. The city of Birkenhead is on the one side, and the city of Liverpool on the other. I told him I would go, and we came across to go to Liverpool, and I went part of the way to this house with him. Then I called a cab and told the cab where to drive him. He went away; that was the last I saw of him that night.

Q Did he tell you of any former expedition in which they had been engaged before the assassination, which did not succeed?

A. I remember of his stating one day that he, Booth, and others had planned the abduction of the President.

Q. Did he give you the date of when they found any failure of it?

A. He did not. I do not remember that he ever told me any date. If he did, I have forgotten it. He said, in reference to the abduction, that after awhile they found out they could not carry on their plan, and they had to abandon it.

Cross-examination by Mr. MERRICK:

Q. You cannot state at what time he said they found they could not carry out their plan for the abduction of the President?

A. No, sir. I do not recollect of any date. All the remembrance I have of dates is on two occasions. One is that he was in Richmond the week previous to its fall, and the other that he was in Montreal at the beginning of the week of the assassination.

Q. Can you recall any circumstance to your mind that will enable you to fix the date of the failure of that plan?

A. I cannot.

Q. Can you say whether that plan of the abduction failed before the fall of Richmond?

A. I cannot say. If you desire my opinion I will give it to you.

Mr. MERRICK. I do not want your opinion, but the facts.

Q. Did he tell you what change of plan this letter of Booth's referred to, when he was directed in it to come immediately to Washington?

A. He did not.

Q. In all these various disclosures which you say he made, he never told you anything of his having been to Washington, or related to you any incidents connected with the assassination in Washington?

A. He did not.

Q. Did he tell you what was in the telegram he sent to Booth from Elmira?

A. No, sir; only I understood him to say that he telegraphed to find out whether Booth had arrived in Washington.

Q. You have made an affidavit on this subject before?

A. Yes, sir.

Q. Where was that affidavit made?

A. In Liverpool, on the 25th or 26th of September, 1865; I am not positive as to the time.

Q. What day did you reach Liverpool?

A. Monday evening.

Q. What day of the month?

A. We sailed on the 16th; I should say it was on the 26th.

Q. Then the affidavit was made on the next day after you landed?

A. Yes, sir; on the Tuesday.

Q. You landed on Monday night, did you?

A. Yes, sir.

Q. In that affidavit did you state as follows: "That Surratt had said to you that he had been concerned in a plan for carrying off President Lincoln from Washington, which was concocted entirely by John Wilkes Booth and himself?"

A. Yes, sir.

Mr. MERRICK (continuing.) "That he came to Canada just before the assassination of President Lincoln took place, and while in Canada received a letter from Booth, saying that it was necessary to change their plans, and requesting him to come to Washington immediately?"

A. Yes, sir; I said so.

Q. He told all that in the same connexion as stated in your affidavits?

A. I must give an explanation here. Those conversations that I have related took place at different times during a period of nine days. He would let me into one thing one day, and into another thing another day. I cannot say that they all followed each other in due course. I cannot remember at this distance of time. He told me all that I have stated, but I cannot say as regards the order. With regard to the affidavit of which you have read a portion, I will say this, that I went to Mr. Wildings, United States vice-consul in Liverpool, and told him that I had some important matter to divulge to him. He sat down in his office and took down my deposition, as you say, *currente calamo*, not *verbatim*, but, substantially, just as I spoke. He never interrupted me at all. He then handed me the paper and asked me if I would swear to it. I said to him, all the facts that the prisoner revealed are not contained in this deposition. He said, "It is immaterial; this will do for the present."

Q. Did you state to him the fact that I have read as it is written?

A. I stated to him what I have stated here in this court, that he was in Richmond the week previous to the fall of Richmond; that he was in Montreal at the beginning of the assassination; and that there he received a letter from Booth ordering him here instantly, for it was necessary for them to change their plans and act promptly.

Q. Their plans, so far as he stated them to you, had up to that time been plans of abduction, had they not?

A. He did not tell me what Booth referred to, and I did not ask him.

Q. Have you never stated that Surratt told you that he first learned of the assassination of the President in Elmira?

A. I never did.

Q. How many affidavits have you made upon this subject?

A. I made an affidavit before Justice Meely in Liverpool. I was called here before the Judiciary Committee last February, I believe.

Q. How long have you been in the city attending to this matter?

A. I arrived in Washington on the 21st of January last.

Q. Have you been here ever since?

A. I have.

Q. What have you been doing here?

A. Nothing.

Q. How have you sustained yourself?

A. I have had money to pay my board.

Q. Who has furnished it to you?

A. I had it from the State Department.

Q. Have you had anything further than money to pay your board since January from the department?

A. Here, within a few days, I wanted some more money, and I called on the deputy marshal and got some from him.

Q. As I understand you, this man Surratt was put in your charge on board of the steamer at Montreal?

A. Yes, sir.

Q. You were then surgeon of the Peruvian?

A. I was.

Q. How came you to leave your position as surgeon of the Peruvian?

A. We arrived in Liverpool, I believe, on the 25th or the 26th. On the Monday the Peruvian's machinery was disabled; she was put into the dock, and I was transferred to the steamship Nova Scotia, belonging to the same company.

Q. How came you to leave the Nova Scotia?

A. I was transferred to another ship when the Nova Scotia was put aside, for the same reason.

Q. To what ship?

A. I was transferred next to the San Davie. I made one round voyage to this country and back, and then I was again transferred to the Belgian. I made another round trip on her, and then I was transferred to the steamship Damascus, of the same company. I remained on her till last September, when I left the company of my own accord.

Q. Why were these various transfers made from ship to ship?

A. If you will allow me I will explain. The surgeons are not attached to any particular ship. They are placed there by the company until the ship they are on is disabled or put up for some reason, and then they are placed upon some other one. The company never lets them remain idle, but transfers them to another ship immediately.

Q. That is the only reason of the transfer made in your case?

A. That is the only reason.

Q. Was medicine your profession originally?

A. Not originally; I was in business for two years with my father.

Q. How old were you when you went into business?

A. Twenty-one.

Q. How old when you left it?

A. Twenty-three.

Q. Did you fail?

A. No, sir.
Q. Did the house fail?
A. No, sir.
Q. Why did you leave your occupation as a merchant?
A. Because I did not like it.
Q. You commenced the study of medicine at twenty-three?
A. I did.
Q. When did you commence the practice?
A. When I was twenty-six.
Q. Where did you begin practicing?
A. I first tried practicing in a place called Lennoxville.
Q. How long did you practice there?
A. Not more than three or four months.
Q. Did you know a man in Lennoxville named James Fuller, a police officer?
A. I did not.
Q. Did you ever hear of him?
A. I do not remember that I ever heard of him as a police officer.
Q. Did you ever hear of him at all?
A. I do not know the man at all.
Q. How long did you live in Lennoxville?
A. Three or four months; I left there in the latter end of September or October, I cannot say which.
Q. Why did you leave Lennoxville?
A. Because I was not doing business enough to satisfy me. I thought I could better myself by going somewhere else.
Q. You had no other reason for leaving?
A. No, sir.
Q. You had no trouble in Lennoxville?
A. No, sir.
Q. You do not recollect of Mr. Fuller as connected with any trouble you had in Lennoxville?
A. I do not recollect of any trouble with which Mr. Fuller had anything to do, or any one else.
Q. Where did you go to when you left Lennoxville?
A. Mansonville.
Q. How long did you remain there?
A. From fifteen to eighteen months.
Q. Why did you leave there?
A. Because I was asked by a medical friend of mine to come and settle in the same place where he was, as he had too much to do himself, he being the only physician in the place, and his health was poor.
Q. Where was that?
A. Waterloo.
Q. How long did you remain at Waterloo?
A. I remained there until I went to sea.
Q. Do you know a man by the name of Dutigny?
A. The name is familiar to me, but I do not recollect the man.
Q. Did you never offer your services in any of these places, in a professional capacity, for the purpose of *fœticide*?
A. I never did.
Q. Did you never offer them to Mr Dutigny?
A. I never did; I swear positively that I never did.
Q. That was not part of your business?
A. It was not.
Q. Are you a married man?
A. I am.

Q. Where is your family?
A. My wife is in Washington.
Q. Did she come on with you?
A. She did.
Q. I suppose the board of both of you is paid by the State Department?
A. I pay my own board.
Q. The State Department furnishes you with money?
A. Yes, sir; if you want to know how much I have got from the State Department, I will tell you.
Q. I ask you if the State Department does not also furnish you with money for your wife's board?
A. My wife has never been mentioned in the case. The State Department never knew my wife was here, or anything of that kind. I do not go and tell the State Department, or any other department, who I take with me when I travel.
Q. How much has the State Department paid you?
A. I have received $350 since I have been here, and $100 from the marshal; $450 in all.
Q. Is that independent of the money to pay for your board?
A. I never received any other money but that; I have never been promised, in any way, any money.
Q. At what time did you leave the service of the steamship company?
A. The latter end of last September.
Q. What business did you carry on after leaving the service of the company?
A. After I left the service of the company I went home for a month and a half, and was doing nothing. I afterwards went west to look for a place. I went to Chicago last November, and staid there until the middle of January last. In Chicago I made arrangements to open an office.
Q. Why did not you open it?
A. Because I was called away to come down here.
Q. Who called you here?
A. I was served with a summons by the marshal of Chicago, or his deputy, I do not know which.
Q. To appear before this court?
A. Yes, sir.
Q. Where were you summoned to appear before the Judiciary Committee?
A. I was not summoned at all. During the session of the thirty-ninth Congress I one day went to the Capitol, where I met a gentleman friend of mine of this city. While we were there, before the opening of the session, he introduced me to Mr. George S. Boutwell, one of the members of the House of Representatives. He told him who I was, and Mr. Boutwell then asked me if I would testify before the Judiciary Committee. I told him I had no objection.
Q. At what time during your voyage was it that Surratt told you in regard to the account you have given us of shooting these Union prisoners?
A. It was during the passage; I cannot tell the date.
Q. Can you tell when it was in the order of events you have narrated?
A. No, sir.
Q. Can you state what he told you first?
A. The first thing he ever told me was when he pointed to a gentleman passenger and asked me if he was not an American detective. He then stated that if I knew all he had done it would make me stare.
Q. What was the next thing he told you?
A. I do not know. It would require a better memory than I have to remember at this distance of time everything he said, in regular order as he said it. I cannot do it. I can only say he told these things to me during the passage.

Q. You stated yesterday that he told you these things along in that voyage, and that on the day of your landing he called you back of the wheel-house and repeated what he had said?

A. He did not tell me all he told me before, but he recounted a great many.

Q. And then, after doing so, took out his revolver and said that he wished to live long enough to serve Andrew Johnson in——

A. Yes, sir. He said, "I hope to God I may live two years longer, in order that I may serve Andrew Johnson as Abraham Lincoln has been served." I recollect that expression because the action of the man at the time is indelibly fixed on my mind.

Q. Did you ever ask him his name before he got to the end of the voyage?

A. I never did.

Q. Did you feel no curiosity to know it?

A. I did.

Q. Why did you not ask him?

A. Because I had my suspicions as to who the man was from his conversation.

Q. If you were suspecting why did you not develop your suspicions, and satisfy yourself by asking him?

A. I did not want to.

Q. Why did you do it finally?

A. Because I wanted to make sure. The passenger had interested me. I think you would have felt the same as I did had you been in my position, and heard all I heard.

Mr. MERRICK. That is possible; but I want to know why this strong desire to know who this remarkable individual was did not lead you to make the inquiry before he started to leave the ship?

A. I do not remember asking him during the whole passage a half dozen questions; and the reason I did not question him is, that he seemed to be so free in expressing everything that he had done, that I thought he would tell me enough without my questioning him. He was quite free; seemed to be overflowing with the subject.

Q. At the same time that he was overflowing with the subject and quite free, I understand you to say that he was very much agitated, and very nervous and excited?

A. Yes, sir; if he happened to be walking alone, and any one came suddenly behind him, he would turn around considerably startled, as if he was afraid some one would come and catch him.

Q. I understood you to say that he surrendered to the gunboat, and the gunboat sent out a small boat; that they waited until the small boat got alongside and then fired into the small boat and escaped?

A. Yes, sir.

Q. Did he tell you how many men there were in the small boat?

A. He did not.

Q. Did he tell you how many men were with him?

A. He told me some dozen or fifteen.

Q. The gunboat hailed them?

A. It did.

Q. And they hauled to?

A. I suppose so.

Q. And said they would surrender?

A. Yes, sir.

Q. Did he tell you how the little boat got back to the gunboat, and what the gunboat did?

A. No, sir. I suppose he did not know himself.

Q. Did he tell you that the gunboat, seeing them fire into the small boat, fired into them?

A. He did not. At least I have no recollection of it. He said that they fired into them and threw them into such a stupor that they escaped to the shore.

Q. He did not tell you what the position of the gunboat was at the time?

A. I do not recollect.

Q. I understood you to say yesterday that he said when he was going down below Fredericksburg, on a car driven by negroes, in company with a lady, that some men came along, and the lady said, "Shoot the damn Yankees:" and thereupon they fired into them and left them there on the ground?

A. I think he said fired at them and left them there on the ground, and went on their way. I would not say positively that he used the words "on the ground."

Q. Did the car stop when they fired?

A. Yes, sir. He said they stopped.

Q. Who stopped them?

A. He did not say who stopped them.

Q. Did he say the car was stopped, or the prisoners?

A. The car.

Q. When did you first make that revelation to anybody?

A. I made that revelation to more than fifty people.

Q. When?

A. Since October, 1865, when Mr. Wilding told me that this government was not going to prosecute the prisoner; that they had not anything against him. I thought the matter never would be brought up before the public again, and so I made no secret of it. I told it to whoever wanted to know it. The first time I saw Mr. Wilding I made the affidavit that you have there. Then he told me not to sail back to Canada again without calling and seeing him. Our steamers were sailing every Thursday. On the Wednesday previous to my sailing to Canada I went and saw Mr. Wilding, and he then told me that he had received news from Mr. Adams, American minister at London, that he was not going to do anything in the matter.

Q. Did you then tell him about the shooting of these prisoners?

A. I had told him that before, when I made the affidavit.

Q. Did he tell you where this shooting of the Union soldiers that you spoke of yesterday was?

A. Perhaps he did; I cannot say positively. I understood him to say within the confederate lines.

Q. What induced you to make this affidavit as soon as you landed?

A. Because I thought the prisoner was guilty of a crime not only against society, but against civilization. I thought it was my duty as a man to go and give him up to the proper authorities.

Q. Did you continue to have the same pleasant relations with him on the steamer with a view of doing that ultimately after you found out what he had done?

A. I did not. I had no intention of giving this information until after we arrived in Liverpool, and he gave me his name. I made up my mind after I found out positively who the man was, that he was guilty of a great crime, and I should give him up.

Q. And you gave him up simply because you regarded him as an enemy to society and mankind?

A. I did.

Q. Did you expect any reward in giving him up?

A. No, sir. I did not then know that a reward had been offered for him.

Q. Have you ever stated that you expected a reward?

A. I have stated that since, many times. I will explain how that is. At the time I went to Mr. Wilding I was in the service of the company, and not being able to lose my situation I said to Mr. Wilding that I had a secret of import-

ance to confide to him, but I would not do so unless he promised me to keep my name a secret. I did not want my name to go before the public in any way whatever. He then gave me his promise it would be so. I then made my affidavit. I would not at first tell him that I was a surgeon in the Montreal Steamship Company, but described myself simply as a surgeon, without stating in whose employ I was. He went to the company's office and found out who I was. When I saw him next he says, "I know who you are," and added, "If you are afraid of losing your position I will state that there is a heavy reward offered for his capture, and you will be entitled to it if he is taken." That was a week after I had made my affidavit. As to having said that I was entitled to the reward, I have said that many times. I often said before he was arrested, or before I knew of it, and since, that if any one was entitled to the reward, I thought myself just as much entitled to it as anybody else.

Q. How much have you said you were entitled to?

A. I did not know.

Q. Didn't you say that you were entitled, or would be entitled, to $40,000?

A. I never said anything of the kind, because, to this day, I do not know what the reward was.

Q. Haven't you stated in this city since his arrest that you would be entitled to the reward, and intended to claim it?

A. I said this—I know where you got your information—that if any one was entitled to a reward for his arrest, I thought myself as much entitled to it as anybody else.

Q. Didn't you say you would be entitled to a reward for his conviction?

A. I didn't say anything of the kind.

Q. Have you said that you were entitled to the reward and intended to claim it?

A. I have no recollection of saying so.

Q. Did anybody say to you in your presence that you were entitled to it and ought to claim it, and you assent to it?

A. Somebody might have said so, but I am not answerable for what others say.

Q. Did you reply?

A. I do not remember of anybody saying so.

Q. Didn't some one ask you if you intended to claim it, and you said you did intend to claim it?

A. I did not.

Q. Have you ever said to any one that Suratt told you that he was in Elmira on the night of the 14th of April, and only discovered on the morning of the succeeding morrow that the President had been assassinated?

A. I never did.

Q. Have you ever stated that Suratt told you that he was in Elmira, and that he went from there to some town in New York, the name of which you could not recollect, but which had an Indian derivation?

A. I never did.

Q. Did you ever state to any one that Surratt first learned of the assassination in the city of Elmira, and immediately turned his face towards Canada?

A. I never did.

Q. Did you ever say to any one in conversation, in which the question of your intimate relations with Surratt on shipboard came up, that Surratt could not have been guilty of the charge of assassination, and therefore you regarded him merely as a political offender; the victim of compromising circumstances, and felt no scruples in extending to him aid?

A. I never did.

Q. Did you ever state to any one that Surratt told you that the whole plan for the abduction of Lincoln was laid by Booth, as an individual enterprise;

that Booth furnished the funds, bought the horses, and spent in that way some $4,000?

A. I never did, in that way. If you want me to state what I said, I will tell you, but I never said what you have just repeated.

Q. Have you ever stated anything different from what you stated on the stand?

A. I will answer your question. He told me that Booth and others had planned the abduction of the President.

Mr. MERRICK. I ask you whether you have ever made any statement contrary to what you have made on the stand?

A. I have never said anything contrary to it. I have said something "different," but not "contrary."

Mr. MERRICK. Now go on and state what you said.

A. I said this—that the prisoner, Booth, and others had planned the abduction of President Lincoln, and that he (the prisoner) and Booth between them had invested $10,000 in the affair, to hire horses and employ men to operate for them, &c.

Q. Did you ever say to any one after your return trip from England, in which you went out with Surratt, that you had never communicated to anybody what Surratt had told you?

A. I never said anything of the kind. I told it to whoever wanted to know it.

Q. Have you ever stated, at any time since you made your affidavit before the consul, that you had never stated any of the conversations with Surratt?

A. I never did.

Q. I understood you to say that you had only made two affidavits. Didn't you make another affidavit in Montreal?

A. I had a conversation with Consul General Potter there, but I made no affidavit.

Q. At the time Surratt called upon you in Liverpool, had you then made your affidavit before the consul?

A. I had. He called on me on Wednesday, and I had made the affidavit the Tuesday previous.

Q. Of course you kept him ignorant of what you had done?

A. I did.

Q. Your object I suppose was to have him arrested?

A. It was.

Q. Did you ever call upon him afterwards?

A. I never called upon him. He called upon me.

Q. Did you promise Surratt to bring him remittances of money from Canada?

A. I did.

Q. Was that after you had made this affidavit?

A. It was on the night previous to my leaving Liverpool.

Q. That was after you had made the affidavit?

A. I had had a conversation with the consul, and he stated that there would be no prosecution of the prisoner. He gave me a letter to take to a party in Montreal.

Q. You undertook to act as his friend after you had made this affidavit before the consul?

A. I did undertake to act as his friend. The letter was addressed to a party I knew, and I took it.

Q. Did not you tell him when you returned that you could not get the money?

A. I told him that his friend said there was no money for him.

Q. Then you saw him again upon your return trip?

A. I saw him once, I believe.

Q. I understood you to say you had not seen him after you went with him to show him the house to which he was recommended?

A. I saw him twice, at least, if not three times.

Q. How often did you see him during your then stay in Liverpool?

A. I believe at the time he crossed I saw him twice. I am not positive, however, whether it was once or twice. When I got back he saw the arrival of our ship announced and came to me in the evening. He asked me if I had anything for him. I believe that is the last time I saw him.

Q. Did Surratt say anything to you about his being in want of money?

A. He did. He said that he was hard up for money; that the parties where he lived seemed to be tired of him.

Q. Did you take a drink with him on this occasion, when he called on you to see if you had any money for him?

A. No, sir.

Q. Did you ever say that you did not believe in future rewards and punishments?

A. No, sir, I never did, nor anything of the kind. I am not foolish enough to say anything like that.

Q. Did you take a copy of that affidavit before the consul at Liverpool?

A. I did not.

Q. You did not give the consul at Liverpool a copy of that affidavit, did you?

A. I did not.

Q. Do you know C. F. Campbell?

A. I do.

Q. He arrived on the Nova Scotia with you, did he not?

A. He did.

The court here took a recess for half an hour.

AFTERNOON SESSION.

GEORGE D. BARTON, paymaster United States navy, sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. State on what vessel you were in the latter part of last year.

A. At that time I was attached to the Swatara, in the European squadron.

Q. In December, 1866, where was the Swatara stationed?

A. In the European squadron.

Q. Whereabouts in that month were you?

A. We were in several places—Marseilles, Nice, Villa Franca, and other places.

Q. You were on the Mediterranean?

A. Yes, sir; at various ports.

Q. Do you know the prisoner at the bar, John H. Surratt?

A. I know that that man was on board the ship.

Q. State when and where you first met him. State briefly the details.

A. I first met him at Alexandria, Egypt.

Q. At what time?

A. The day he was brought on board the ship, December 21, 1866.

Q. Under what circumstances did you see him?

A. I saw him when he was brought on board the Swatara as a prisoner; I heard he was coming, and went on deck to see him when he came.

Q. When he came on board state the course of the vessel.

A. After we took him on board we went to Port Mahon, expecting to find the admiral there. We went directly from Alexandria to Port Mahon, and then from there to Villa Franca, where we found the admiral. We were then ordered to this country and came direct, stopping at Madeira for coal.

Q. When did you get here, and where did you deliver the prisoner?

A. We arrived at Cape Henry the 18th of February, came up the river and delivered him here in Washington.

Q. What month and what day of the month?

A. It was in February, I think about the 21st; it was two or three days after we arrived off Cape Henry.

Q. State how the prisoner was dressed when you first received him on board the vessel?

A. He was dressed in the uniform of the Papal zouaves.

Q. Describe it.

A. It was the regular zouave dress, very much the same as we have here; blue pants, red trimmings, blue zouave jacket, fez cap, and the white gaiters of the zouave.

Q. At what port did you stop before going to Alexandria?

A. Malta.

Q. And from where to Malta?

A. To Malta from Civita Vecchia, the seaport of Rome.

Q. State as nearly as possible the time of your departure from Civita Vecchia, and the time you visited Malta.

A. I think it was the 11th or 12th of December that we left Civita Vecchia, and that we were about two days going to Malta, and about five days going to Alexandria.

Q. What is the distance from Civita Vecchia to Alexandria?

A. About two hundred miles.

Q. Taking about six days, steam or sail?

A. Yes.

Q. The Swatara is a steam vessel?

A. O, yes.

Q. You brought her here to the navy yard?

A. Yes, sir.

Mr. BRADLEY said that to save time the defence admitted that the prisoner at the bar was the man taken on board the Swatara, and that he was in the zouave uniform.

WILLIAM M. WERMERSKIRCH, resident of New York city, sworn and examined.

By the DISTRICT ATTORNEY:

Q. Were you an officer in the army in 1865?

A. I was.

Q. State to the jury if you were at the house of Mrs. Surratt in this city, on H street between Seventh and Sixth, No. 541, on the 17th of April, 1865.

A. I was, on Monday night the 17th of April, 1865, at 541 H street in this city the house of Mrs. Surratt, as I understood.

Q. What officers were in company with you at that time?

A. Major H. W. Smith. There were two detectives, one by the name of Rosch and the other by the name of Samson.

Q. The Major Smith who was examined as a witness?

A. Yes, sir.

Q. Did you see Mrs. Surratt at the house on that occasion?

A. I did.

Q. Did you afterwards see her when you were a witness before the military commission?

A. Yes, sir.

Q. Did you see any one else there who you afterwards recognized when you were before the military commission?

A. I saw a man who I understood was Payne, or Powell.

Q. State to the jury how long you had been at the house before Payne made his appearance.

A. We were at the house 30 or 45 minutes; perhaps it may have been an hour, when he came in.

Q. State his appearance at the time when he came in there—how he wa dressed.

A. He had on a coat of a dark gray color, black pants, ordinary leather boots, and on his head he had a kind of a head-dress which seemed to be made out of the sleeve of an undershirt. He had a pick-axe on his shoulder, and looked as if he had been marching over muddy roads.

Q. Describe his boots.

A. His boots were full of mud, and from their appearance and the mud on his pants it seemed as if he had been crouching or sitting down in a very muddy place.

Q. Was the leg of his pantaloons over his boots or otherwise?

A. His pantaloons were tucked in his boots.

Q. Both of them, or one?

A. I think both of them.

Q. State what he said when he came to the house?

A. When he came to the house he was asked to come in, because he refused to come in after he saw strangers present. After he came in he was asked what he wanted; he said he wanted to see Mrs. Surratt; he first inquired if that was Mrs. Surratt's house; he was then confronted with Mrs. Surratt and she was asked whether she knew the man; she held up her hands and said she did not know the man, and called God to witness. "Before God I do not know this man."

Q. What explanation did Payne give of being there?

A. Payne stated that he had been engaged by Mrs. Surratt to dig a gutter in the rear of her house in the yard; that he had met Mrs. Surratt a day or two previous on Pennsylvania avenue, and that she had engaged him to do this work.

Q. Who asked Mrs. Surratt whether she knew Payne?

A. Major Smith asked her.

Q. Did I understand you to say that she elevated both her hands or one of her hands?

A. She lifted them up, but not very high, about half way to her head, about in this position, (explaining.)

Q. She said she had never seen that man before?

A. "I have never seen that man before."

Q. You said you were there some time before Payne made his appearance; during that time did you have any converstion with Mrs. Surratt or hear any conversation between Mrs. Surratt and Major Smith, or any other officer with whom you were acting at that time?

A. I did not have any conversation with Mrs. Surratt during the time or after; Major Smith had. When we entered the house I took possession of the key and locked the door. I stationed myself very near the door, so as to be able to open it if any one desired to enter. In that way I was kept away from the parlor in such a way that I could not overhear everything that took place there.

Q. Did you hear any part of the conversation?

A. I did.

Q. State what you did hear.

Question objected to by Mr. Bradley on the ground that the witness had stated he was at such a distance that he could not hear more than detached portions of the conversation.

Objection overruled. Witness may state what he did hear.

WITNESS. Major Smith told Mrs. Surratt and the other ladies—there were three of them—that he arrested them; that they were his prisoners; that they had to come up with him to the Provost Marshal General's office. Thereupon Mrs

Surratt requested him to allow her to go up and get their cloaks and bonnets to put on. Major Smith told her she might go up there, and accompanied her himself. Miss Anna Surratt had been weeping a great deal and was quieted by Mrs. Surratt; what she said to her daughter I do not know, because she said it in a very low tone—whispered it to her. She then asked Major Smith's permission to kneel down and pray, and she thereupon knelt down. Shortly thereafter they left. We had sent for a carriage in the mean time, and the carriage had got there and they were sent up to headquarters.

Q. After praying in the manner you have described, where did Mrs. Surratt go?

A. After prayer she came out in the hall; she went through the hall and entered a carriage.

Q. Did she then see Payne?

A. It was at that time she saw Payne.

Q. Then the remark to which you have already testified of Mrs. Surratt, her denial that she knew Payne, was made after this?

A. After this; yes, sir.

Q. Do you recollect whether as she went out she passed Colonel Morgan by the door?

A. Yes, sir.

Q. Do you recollect her making any remark at that time?

A. To Colonel Morgan—no, sir.

Q. Or did she make any remark to you at that time, that you heard made?

A. No, sir; not within my hearing.

Q. Did you hear her say anything more after that?

A. I did not after that; no, sir.

Q. Now state if you remained and made an examination of the house.

A. I remained in the house after Mrs. Surratt had been sent away. Payne was kept there at that time, because we had not accommodations for him in the carriage, and no men to send with him to headquarters. Major Smith, Colonel Morgan, and myself remained and searched the house to see if we could find any evidence.

Q. Who did you find; did you find any person there?

A. We found a colored woman in the kitchen.

Q. Would you know her if you were to see her?

A. I think I would.

Q. How old a woman was she?

A. I never thought of that question; I should think about 30 or 32.

Q. Have you seen her since?

A. I do not know that I have since that night.

Q. Did you ever hear her name called?

A. Susan Ann Jackson was her name.

Q. What did you find in the house?

A. We found a large number of pictures, letters, and papers, bullet mould, spurs, a pair of boots, very dirty, which had been left there immediately previous, full of mud.

Q. You speak of pictures; do you mean cartes-de-visites?

A. Cartes-de-visites. We found them scattered about the house, partly on the mantel-piece, and partly in albums.

Q Examine these (photographs shown) and state if these are among the articles you found.

A. Yes, sir; these photographs or pictures are very much like those found in the house. I did not make any marks on them, but I think these are the pictures.

Mr. BRADLEY. That will not do, unless you can identify them.

WITNESS. This one of General Beauregard was found in the house.

Mr. BRADLEY. Do you know General Beauregard, and can you identify the picture by that?

WITNESS. No, I never saw him. I have seen pictures of him.

Mr. BRADLEY objected to this evidence, as witness had stated that he could not identify the pictures.

The COURT said witness might describe any pictures he found there.

WITNESS. There were a number of pictures apparently in the uniform of the confederate army, and some of citizens. They had names written under them representing to be the names of the persons whose pictures they were, mostly prominent rebels in civil life and in the military service of the confederacy.

Q. What were the names of these persons?

A. Davis, Stephens, Beauregard, and others that I do not now recollect.

Q. Were they old or new?

A. A part of them were new and a part old. They seemed to have been handled a great deal.

Q. Was there any other picture that attracted your attention?

A. Yes, sir; this picture I found in the back room lying on the mantel-piece. (The picture referred to was a card painted in colors with the arms of the State of Virginia, and two confederate flags, having the inscription—

"Thus will it ever be with tyrants."

"Virginia the mighty."

"Sic semper tyrannis.")

Mr. BRADLEY objected to the evidence as incompetent.

The COURT stated that it would be proper to draw out from the witness precisely how far he was able to recognize the pictures. He might say, on the bundle being handed to him, that he could not recognize them, and yet, on examining them in detail, he might be able to identify one, two, or three of them, and any such so identified could go to the jury.

Mr. BRADLEY said he understood the rule to be that when a witness stated he could not identify anything there was an end to the matter.

The COURT said that although the witness might have failed to identify them when shown to him in a bundle, each individual picture might still be shown one by one.

Mr. BRADLEY said he did not object to that, and that he hardly thought it necessary for the court to have taken the time to have made the remarks he had on the subject.

The COURT replied that he objected to the course of Mr. Bradley in stopping the witness, after he had failed to recognize a bundle of pictures, from identifying them separately.

Mr. BRADLEY said that was not so.

The COURT replied it was so, and that he (the court) knew it.

The witness was directed to proceed.

WITNESS. I cannot recognize any of them except the two I have mentioned.

By the DISTRICT ATTORNEY:

Q. By whom were these pictures numbered 1, 2, and 4, marked?

A. I do not know; they were not marked by me.

Q. These pictures you recovered from the house; what did you do then?

A. We placed them first in a bundle, but finding we had got so many papers and articles, which we thought necessary to send to headquarters, we put them in a trunk.

Q. To whom was this trunk delivered?

A. It was sent in one of the wagons to headquarters. I assisted in carrying it out of the room. I afterwards saw it at headquarters. I recognize this picture of General Beauregard by scratches on it which I then noticed right over the head.

Mr. MERRICK. You recognize that as one you took from the house?
A. Yes, sir.
Q. The other three then, you do not recognize?
A. I do not.

DAVID S. GOODING, United States marshal for the District of Columbia, sworn and examined.

By the DISTRICT ATTORNEY:

Q. State if you recognize the prisoner.
A. I recognize the prisoner; yes, sir.
Q. State to the jury if he was delivered into your custody; if so, when and where?
A. Not having known I was to be called as a witness, at this moment I cannot fix the date when he was given into my custody, as marshal of the District. It was when he was landed at the navy yard.
Q. After receiving him what did you do with him?
A. I took him in a carriage with Deputy Marshal Phillips.
Mr. BRADLEY said that the defence had already admitted that the prisoner arrived in this country by the Swatara, and that ought to be sufficient.
The COURT said that was true; that this was merely a waste of time.

JAMES WALKER, (colored,) sworn and examined.

By the DISTRICT ATTORNEY:

Q. How long have you been living in the city?
A. I came here in 1862, the first of September, from Fredericksburg, Virginia.
Q. Where did you live after you came here?
A. When I first came here I followed the army around for a while. I went in April, 1863, to the Pennsylvania House, kept by Greenwalt & Kirby.
Q. Where is the Pennsylvania House?
A. Mr. Kimmell lives on one side, and Flemming's stable is on the other.
Q. Near a livery stable?
A. Yes, sir.
Q. On what street?
A. C street, between Four-and-a-half and Sixth street.
Q. What was your business there?
A. My business was to work around the house. I had charge of the house from half-past twelve o'clock at night until morning.
Q. Did you know a man they called George A. Atzerodt?
A. Yes, sir.
Q. Where did you first see him?
A. He came there on a stage from Marlboro' or Piscataway, I do not know which. The stages came from both these places.
Q. How often had you seen him at the house?
A. He stopped there two or three weeks or more.
Q. Did you ever see anybody there who came to visit him?
A. Yes, sir; there was a young man visiting him whom he called John. He told me he was his friend.
Q. Did you see him there frequently?
A. He was there more or less whenever the stage would come.
Q. Would you know that man John if you were to see him again?
A. I reckon I ought to know him.
Q. Is that the man? (pointing to the prisoner, who stood up)

A. That is the man I have seen.

Q. How often have you seen that man there visiting Atzerodt as his friend?

A. I do not know how often; right often. They were there together at the time the stage came.

Q. Were you in the habit of blacking boots there?

A. Yes, sir; I was the bootblack.

Q. Do you recollect what room it was Atzerodt occupied?

A. 51, more or less; 51.

Q. Do you recollect the night President Lincoln was killed?

A. I think I do.

Q. Do you recollect seeing Atzerodt that night?

A. Yes, sir.

Q. What time was it that you saw Atzerodt, as near as you can state?

A. It was between ten and eleven o'clock. He was then on horseback; he came from towards the Metropolitan, down C street; turned his horse round at the door and calls me to hold him; I goes out and holds the horse; he goes into the bar, but does not stay very long.

Q. What kind of a horse did he ride?

A. It seems to me it was a light bay.

Q. Now, go on and state what he did.

A. He asked me to give him a switch. Said his horse was rather apt to shy at a light. Then, said he, I have traded my horse away. He had a dark bay horse, that would rack, that he generally rode.

Q. Did you give him a switch?

A. I did not find a switch; I took an old barrel hoop, cut it, and straightened it out. I gave it to him in his hand, and he went off the way he came.

Q. Did you see him any more after that?

A. He came back again between one and two o'clock that night and wanted a room.

Q. How did he come back?

A. He came afoot to the door. I was lying down asleep. When he rang the bell I got up and opened the door.

Q. Where did you sleep?

A. I always slept in the bar-room, so that I could hear the bell ring. He came in and says, "I want a room." Said I, "You cannot get 51; it is occupied." He then said he didn't care; he wanted a bed. I said there was a vacant bed in 53, and he could go to it.

Q. Where was Mr. Greenwalt at that time?

A. I do not think he was in the house.

Q. Did any one come with him at that time?

A. Yes, sir; one gentleman came with him.

Q. Who was that gentleman?

A. The gas-light seemed to be low. I had put the gas just so that I could see to go through the passage. Atzerodt said he wanted a room for nim and his friend. He never had paid me for his lodgings. His friend paid for his lodgings and wanted to take the early train the next morning.

Q. Who was that man?

A. I do not know who it was; it seemed to be dark. He had his hat to one side of his face, just this way, (explaining.)

Q. You do not know who that was?

A. I could not identify who he was.

Q. Describe him?

A. He seemed to be a young man, rather full in the face; his face looked a little red in the dark. I did not examine him very close.

Q. Was he a tall man or a short man?

A He was pretty tall about the size of that man sitting there, (pointing to prisoner;) he did not seem to be quite so tall as he is now.

Q. Did you see them to bed?

A. Yes, sir; I took them up to the room.

Q. At what time did they leave?

A. I do not know exactly what time—by the early train. There were three who took the early train. I had to go for a hack for the first train that Saturday morning. It was kind of misty; I went round to the Metropolitan to get a hack, but there were none there and I had to make up as far as Seventh street and Pennsylvania avenue. There I got a hack; went back to the Pennsylvania House and put a lady in it.

Q. Do you recollect whether you have seen Atzerodt have any arms about him?

A. I have seen him with a bowie-knife and pistol in the room where he slept.

Cross-examination by Mr. BRADLEY:

Q. Did you see these men come and go about the same time?

A. When I went to the door they were there together; I do not know whether one came before the other.

Q. You were examined before the military commission down at the Penitentiary?

A. Yes, sir.

Q. Did these men seem to be in company with each other at all?

A. They did not have any conversation at all in my presence.

Q. Did they seem to know each other?

A. I cannot say what they knew; they did not say anything to me. Atzerodt seemed to call the other his friend, and must have known him.

Q. When you were asked about it down at the arsenal did you not say you did not know whether they knew each other or not; that they had no conversation in your presence?

A. They did not have any conversation in my presence.

Q. Do you remember whether you were asked to describe that man that came in that night—what sort of a looking man he was; and if so, what did you say about it, if you remember?

A. I said he was a man kind of red in the face; that he had a slouch hat, which he wore a little over one eye.

Q. Did he look like a young man?

A. He looked like a young man.

Q. Do you say, then, that he was a young man?

A. He looked to me to be one.

Q. Did you say that when you were examined down yonder?

A. I disremember whether I said he was young or old. I do not think I said he was an old man.

Q. That man went right straight to his room, did he?

A. Yes, sir.

Q. Did you see that man in the morning?

A. When I opened the door to go for the hack three men went out of the passage; that man was one. Three of them went out of that room to take the early train.

Q. Did this man and Atzerodt go away at the same time, or one before the other?

A. No, sir; they did not go at the same time; Mr. Atzerodt came out after they were gone.

HENRY BENJAMIN ST. MARIE sworn and examined.

By Mr. PIERREPONT:

Q. Please tell us where you were in the month of April, 1866.
A. I was in the Papal states, in Italy.
Q. At what town?
A. Velletri.
Q. State how far Velletri is from Rome.
A. About forty miles.
Q. What was your occupation there?
A. I was a soldier in the Papal army.
Q. What company were you in?
A. In the 9th company.
Q. What was that called?
A. Papal zouaves.
Q. Is that the dress? (exhibiting the dress worn by the prisoner on his arrival in this country.)
A. That is the dress, sir.
Q. What is worn on the head?
A. Sometimes we wear that, (fez cap taken from prisoner;) at dress parade we wear a cappa, a kind of cap; when not on parade we generally wear this.
Q. Were you stationed there?
A. Yes, sir; I was going through my exercise, learning to drill, in the 9th company.
Q. Did you see this prisoner there?
A. Yes, sir.
Q. How was he dressed?
A. He was dressed in these clothes, I think, or a uniform something like them.
Q. Did you know him at the time?
A. Yes, sir; I knew him.
Q. Do you know at what time in April it was?
A. As far as I can remember I think it was about the 14th or 15th of April.
Q. I will now go to the following month of June; state whether you saw the prisoner in that month.
A. I did see him about the 18th or 19th of June, 1866.
Q. About that date did you take any walk with him?
A. Yes, sir; he came to my quarters and asked me to take a walk with him.
Q. Who else walked with you?
A. Two other zouaves, Frenchmen; their names were DeBart and LeBarr.
Q. You four walked together?
A. Yes, sir; we took a walk.
Q. What road did you go?
A. Outside the city of Velletri, on what is called the road to Naples.
Q. Did you talk to the prisoner?
A. Yes, sir; I was occasionally speaking with him in English, and occasionally to the two others in French.
Q. Did the prisoner tell you at this time anything about his disguises? if so, what?
A Yes, sir; I asked the prisoner how he got out of Washington; if he had a hard time in escaping. He told me he had a very hard time.
Q. How did he say he got out from Washington?
A. He told me he left that night.
Q. What night?
A. The night of the assassination, or the next morning, I am not positive.
Q. What was the disguise, if any, he told you he had?

A. He told me he was so disguised that nobody could take him for an American; that he looked like an Englishman; that he had a scarf over his shoulders. He did not mention any other disguise that I remember.

Q. We will now pass on to Malta; did you see him at Malta?

A. No, sir; I did not.

Q. Did you go to Malta?

A. Yes, sir.

Q. From Malta where did you go?

A. To Alexandria.

Q. When you got to Malta he was not there?

A. He was not there.

Q. When you got to Alexandria, in Egypt, did you see him there?

A. I saw him on board the Swatara.

Q. In Egypt?

A. In Egypt; yes, sir.

Mr. BRADLEY inquired at what time the testimony for the prosecution could be completed, stating that he desired twenty-four hours' notice in order to be ready to proceed with the defence.

The DISTRICT ATTORNEY said it would be impossible to state at precisely what time. He hoped they would be able to conclude to-morrow, but could not state in advance how long a time would be occupied in the examination of a witness.

The court took a recess until to-morrow morning at 11 a. m.

WEDNESDAY, JULY 3, 1867.

L. J. A. MCMILLAN recalled for further cross-examination:

By Mr. MERRICK:

Q. In the examination yesterday, I asked you with regard to certain conversations between yourself and other parties. I wish to make an additional inquiry in reference to a conversation omitted at that time. Did you cross the Atlantic in the Nova Scotia with Stephen F. Cameron?

A. I did.

Q. Did you ever state to Stephen F. Cameron that John Surratt told you that he was in Elmira on the night of the 14th of April?

A. I said no, and I repeat the same answer now.

Q. Did you ever state to Stephen F. Cameron that Surratt told you that he was in Elmira on the night of the 14th of April, and only learned on the morning of the succeeding morrow that the President had been assassinated?

A. I did not.

Q. Did you ever state to Mr. Cameron that Surratt told you that he was in Elmira, that he went from there to some town in New York, the name of which you could not recollect, but which had an Indian derivation?

A. I did not.

Mr. MERRICK. The times when these statements were made were on the voyage in the Nova Scotia. I do not allude to any other time.

WITNESS. I understand you.

Q. Did you ever state to Mr. Cameron, or to any one else, that Surratt first learned of the assassination of the President in the city of Elmira, and that he immediately turned his face towards Canada?

A. I did not.

Q Did you ever say to Mr. Cameron, or any one else, in a conversation with regard to your intimate relations with Surratt on ship-board, that Surratt could not have been guilty of the charge of participation in the assassination, and therefore you regarded him merely as a political offender and a victim of compromising circumstances, and that you felt no scruples in extending aid to him?

A. I did not.

Q. Or words to that effect?

A. No, sir.

Q. Did you ever state to Cameron, or to any one else, that Surratt told you that the whole plan for the abduction of Lincoln was laid by Booth as an individual enterprise; that Booth furnished the funds, bought the horses, and spent in that way some four or six thousand dollars?

A. I did not.

Q. Did you ever say, without stating the amount of money, that the whole plan was a plan of Booth's?

A. I did not.

Q. Did you ever state to Cameron on that occasion, or on any other, or to any one else, that after making your affidavit in Liverpool, you had never communicated your conversations with Surratt to any one else but himself, the said Cameron?

A. I did not.

Q. Did you ever state to Cameron, or to any one else on that occasion, that Surratt told you the first knowledge that he had of his mother's peril was of her impending or immediate execution?

A. I remember the prisoner stating something about his mother; but whether I said, or he said to me, that the first he heard of her peril was pending the execution, I do not remember. I do not think anything of the kind was said. There was something said about her, but I could not say what it was.

Q. Don't you recollect saying to Cameron that Surratt told you he did not know anything of his mother's danger until about the time of her execution?

A. I do not think I did.

CHARLES H. M. WOOD, sworn and examined.

By Mr. PIERREPONT:

Q. What is your business?

A. I am a barber by trade.

Q. Have you been a barber in the city of Washington for some time?

A. Yes, sir; ever since I have been in the city.

Q. How many years?

A. Since December, 1862.

Q. Where was your barber shop in April, 1865?

A. I came here on a Saturday, about the first of September, 1862, and I engaged to go to work at Messrs. Booker & Stewart's barber shop, on E street, near Grover's theatre, next to the old Union building.

Q. In this city?

A. Yes, sir.

Q. Are you working at the same shop now?

A. No, sir; I now have a barber shop under the Ebbitt House, near Fourteenth street. I am now in business for myself.

Q. Did you know Booth by sight before the assassination?

A. Very well, sir.

Q. Did you ever cut his hair?

A. I have, frequently.

Q. Did you ever shave him?

A. I have.

Q. You knew him well?

A. Very well, sir.

The prisoner at the bar was here requested to stand up, which he did.

Q. Have you ever seen that man (pointing to the prisoner at the bar) before?

A. I have.

Q. On the morning of the assassination did you see him?
A. Yes, sir.
Q. Where did you see him?
A. I saw him at Mr. Booker's barber shop.
Q. What did you do to him?
A. I shaved him and dressed his hair.
Q. Will you tell us who came into the shop with him, if anybody?
A. Mr. Booth came in, there were four persons who came together.
Q. Who were the four persons beside Booth and Surratt?
A. A gentleman I take to be Mr. McLaughlin, they called him "Mac," and from his appearance; (I having since seen the picture of Mr. McLaughlin,) I should think it was him.
Q. Did he tell you where he had come from that morning—McLaughlin?
A. They were speaking of Baltimore; the conversation between them was in reference to some Baltimore——
Q. Between whom?
A. Between Mr. Booth, Mr. McLaughlin and Mr. Surratt, the other gentleman that was with them had nothing to say; he sat down nearly in the rear.
Q. Did you ever see the other man afterwards?
A. I never saw either of the parties afterwards except this gentleman (the prisoner.)
Q. Who was the other man, do you know?
A. I did not know him.
Q. You may describe the man.
A. He was a short thick-set man with a full round head; he had on dark clothes which we generally term rebel clothes, and a black slouched hat.
Q. Did you cut Booth's hair that morning?
A. I did; I trimmed his hair round and dressed it.
Q. Won't you tell the jury what occurred between Booth and Surratt whilst you were trimming Booth's hair?
A. There was nothing particular that occurred.
Q. What was said?
A. Whilst I was waiting on Mr. Booth, Mr. Surratt was sitting just in the rear of me; the thick-set man was sitting to the left of the looking glass, just in the rear of my chair. The glass was next to the wall, and Mr. Surratt was on the right side of the glass, the other one on the left hand. There were not any words particularly that I remember said or interchanged; but when I had got through waiting on Mr. Booth, he (Mr. Booth) got out of the chair and advanced toward the back part of the shop; Mr. McLaughlin was in that direction doing something about the glass. Mr. Surratt took my chair immediately on Mr. Booths' getting out. During the time that I was spreading my hair gown over him, and making other preparations for shaving him; this other young man, rather tall, with dark hair—I think not black but dark brown hair—rather good looking, with a moustache, was figuring before the glass; he had on a black frock coat, and putting his hand in his pocket he took out two black braids; one of the braids with curls he put on the back of his head, allowing the curls to hang down, he then took the other braid and put it on the front; it had curls also, and they hung on the side. When he had done this he said; "John, how does that look?"
Q. Whom did he address as John?
A. I do not know whether it was Mr. Surratt or Booth, but in making the remark, he said "John." I turned round and said, "he would make a pretty good looking woman, but he is rather tall." Says he, "Yes," in rather a joenlar manner, laughing at the time. He seemed to look taller to me when he put on these curls than he did before, though I had not taken particular notice of him

before that. This time Mr. Surratt said to me: "Give me a nice shave and clean me up nicely; I am going away in a day or two."

Q. Will you state, when he said "Clean me up nicely," what his condition was as to being clean or not?

A. He seemed to be a little dusty, as though he had been travelling some little distance and wanted a little cleaning and dressing up, as I am frequently called upon by gentlemen coming in after a short travel.

Q. Did he say anything to you about Booth?

A. Yes, sir.

Q. What was that?

A. He asked me if I noticed that scar on Booth's neck. Says I, "Yes." Says he, "They say that is a boil, but it is not a boil; it was a pistol shot." I observed, "He must have gone a little too far to the front that time." This gentleman (Mr. Surratt) observed, "He like to have lost his head that time." I then went on and completed the shaving operation. I shaved him clean all round the face, with the exception of where his moustache was. He had a slight mustache at the time.

Q. What did you do with the hair?

A. After I was done shaving, I washed him off in the usual way, dressed his hair, and put on the usual tonics and pomade.

Q. Tell the jury about what time in the morning it was.

A. I think it was near about nine o'clock. I had had my breakfast.

Q. Where had you been that morning?

A. I had been up to Mr. Seward's, and had come down again.

Q. Where did you find Mr. Seward?

A. In his room, third story.

Q. Was he up or in bed?

A. He was up.

Q. Did you see any other gentlemen at Mr. Seward's that morning?

A. Yes, sir; I think I did.

Q Whom did you see?

A. Mr. Stanton called. Mr. Seward was either on the bed, or on the chair by the bed, when I shaved him. I do not remember now exactly which.

Cross-examined by Mr. BRADLEY.

Q. Where did you commence to work after arriving in this city?

A. I commenced to work at Messrs. Booker & Stewart's, on E street.

Q. And continued to work there until you went to the Ebbitt House?

A. Yes, sir.

Q. You say this thing occurred at the shop of Messrs. Booker & Stewart, about nine o'clock in the morning?

A. I think it was about nine o'clock?

Q. And you had been up to Mr. Seward's and shaved him?

A. Yes, sir, and returned.

Q. Mr. Stanton was there?

A. Yes, sir.

Q. Who else was in the shop at the same time, do you remember?

A. There were several hands at work there at the time.

Q. What sort of a looking man was McLaughlin?

A. The gentleman I have taken to be McLaughlin, they called him "Mac" in referring to him, was a man quite as tall as Mr. Surratt, I think near about the height of Mr. Surratt and Booth. They were all three nearly about one height. Perhaps he might have been a little the tallest.

Q. Was he a fine looking man?

A. Yes, sir; he was what I would term a very handsome man.

Q. Do you remember his hair at all?

A. It was very dark brown. I do not think it was black.

Q. Had he any beard on his face?

A. He had a moustache on, and, if I mistake not, an imperial; but I am not so sure about that. I am certain he had a moustache. I took more particular notice of his hair and his size. He had on a black frockcoat. I think he had a black silk hat, and light pantaloons.

Q. Do you remember how Mr. Surratt was dressed?

A. He had on, I think, as near as my memory serves me, rather light clothes, but I did not take particular notice of his clothes. As soon as he got into my chair, I took up my hair-gown and spread it all over his clothes, so that you could not see hardly anything except the tips of his pantaloons.

Q. You saw him while you were shaving Mr. Booth, did you not?

A. He came in with the rest of the party.

Q. Could not you distinguish him as well as you could distinguish McLaughlin and the other man?

A. If I had taken that much notice. I took more particular notice of his head and face.

Q. You had the same opportunity, however, to observe him as you had to observe Mr. McLaughlin?

A. As near as I can remember, the clothes he had on were rather light. I cannot remember the particular kind of clothes, whether woollen, linen, or cotton.

Q. Do you remember what sort of a hat he wore?

A. I did not take notice of his hat. Gentlemen generally come in there, take their seats on the side next the wall, and immediately hang their hats on the rack against the wall.

Q. You say he had no beard on his face?

A. No, sir; he had a slight mustache.

Q No imperial, goatee, or anything on his chin?

A. No, sir.

Q. Do I understand you that you had never seen any of these men but Booth before that morning?

A. I knew Booth very well. I had seen him in Baltimore, and cut his hair when a boy.

Q. You had not seen the other three before that time?

A. No, sir; I do not think I had seen any of the others.

Q. And you have never seen them since, until you saw Mr. Surratt here?

A. I live on E street, just below here, and as I was going down to my dinner one day, passing this court-house, he was coming out with the jailor. I stood aside and looked. When I saw him I was utterly astounded. I instantly thought I recognized in him the gentleman I had shaved and waited on immediately after Mr. Booth, on the morning of the 14th of April. It made such an impression on my mind that I spoke of it.

Q. When was it you met and recognized him?

A. Last week, I think, Monday or Tuesday.

Q. Do you recollect whether there was anybody in the shop that morning?

A. The young man that worked in the chair back of me, I think, was in there. His name is Teebo; he is a small man. He is now working in Norfolk.

Q. Do you know whether there were any other customers?

A Well, about that time we were very much pressed, and we all had about as much as we could do, there were so many strangers coming in. The shop being next to the paymaster's office, soldiers used to come in there in perfect droves.

Q. Particularly in the morning?

A Yes, sir, generally pretty hard at work all day at that time.

Q. Was there anybody else there except yourself?

A. The man who worked next to me in the next chair, I think, was gone to breakfast about that time.

Q. Do you recollect about what time he went to breakfast?

A. Some of us took our breakfast before we came to work. Others would be at the shop and work until we came and then go to breakfast.

Q. What time did that man go to his breakfast?

A. Between 8 and 9 o'clock, along thereabout

Q. What was his name?

A. Robert Burton, I think; I am not sure about the first name.

Q. Where is he?

A. He is there working at the same place.

Q. Is he not one of the proprietors?

A No, sir; he was working on the first chair on the left hand as you enter the door.

CHARLES RAMSELL, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. Boston, Massachusetts.

Q. Were you in the war?

A. I was.

Q. What company and regiment?

A. Company D, Third Massachusetts heavy artillery.

Q. What time in the year 1865 did your company come to Washington?

A. They came here in '64; I do not remember exactly what time.

Q. About what time in the year?

A. It was in May.

Q. How long did you remain here?

A. Until September, '65, I think.

Q Do you remember the day that the President was assassinated?

A. I do.

Q. In the early morning of that day, won't you tell the jury what you did?

A. I was in Washington the day of the assassination. The morning after I was not in the city. I came down from Fort Bunker Hill on that day.

Q. What time did you come from Fort Bunker Hill to Washington on the 14th?

A. About 9 o'clock, I should think; between 9 and 10.

Q. Tell the jury how far Fort Bunker Hill was from this court-house.

A. It was about four miles.

Q. In which direction?

A. I could not tell in which direction, but it was on the Bladensburg road.

Q Was it the turnpike road?

A. I do not know whether it was the turnpike road; it is the road that leads to Glenwood cemetery.

Q. Did you stay in Washington that night?

A. I did.

Q. Where did you stay?

A. In the early part of the evening I was at Canterbury Hall, a place of amusement; and I stayed in the barracks of some company that was here at that time, during the night. It is a place called "Soldiers Home" or "Rest," or something of that kind, near the depot.

Q. In the early morning following the assassination what did you do?

A. I went from here out to Fort Bunker Hill.

Q. Who went with you?

A. A man by the name of Robert G. Staples.

Q. Tell the jury how you went, whether on foot or horseback?
A. On foot.
Q. What was Staples? Was he in your company?
A. He was a private in my company.
Q. About what time did you leave Washington?
A. I could not tell exactly what time—between 4 and 5.
Q. Will you tell the jury, after you got out on the Bladensburg road, what you saw that attracted your attention?
A. I saw a horse hitched to an opening in the fence, about two miles from here.
Q. Describe that horse.
A. It was a dark bay horse.
Q. Describe his forehead.
A. I think he had a star on the forehead, if I recollect right.
Q. What of his feet?
A. I do not recollect exactly, but I think he had one white foot.
Q. What had he on him?
A. Trappings; a citizen's saddle and a piece of woollen blanket under it.
Q. What kind of blanket was it?
A. Soldier's blanket, I think it was.
Q. Was he saddled and bridled?
A. I think he was.
Q. How near the house was it where he was tied?
A. It may be a hundred yards from it.
Q. Did he excite any remark?
A. No, sir; not at the time.
Q. You observed him?
A. I did.
Q. Soon after you passed this horse tell the jury what occurred.
A. About fifteen minutes after I passed this horse a man rode up to me on this same horse and asked me if there would be any trouble in getting through the pickets, or something of that kind.
Q. What did you tell him?
A. I do not recollect what I told him exactly, but I think I told him that I thought there would be, or something to that effect. I asked him if he had heard of the news of the assassination of the President.
Q. What did he say?
A. He did not make any answer, but gave a sneering laugh.
Q. What did he do?
A. He looked back and on both sides.
Q. In what manner?
A. He appeared to be very uneasy, fidgetty, and nervous.
Q. Could you discover anything that arrested his attention?
A. There was a man coming from the city, an orderly, I think, carrying despatches to Fort Bunker Hill. As soon as he saw him coming he rode away.
Q. What did he say when he saw this man coming?
A. He said he thought he would try it, and rode away.
Q. Try what?
A. Try the pickets.
Q. How did he ride?
A. The horse went at a pretty fast gait.
[The prisoner was here requested to stand up in such a position that the witness might see his back.]
Q. Did you ever see that man (pointing to the prisoner) before?
A. I think I have seen that back before.
Q. Did you see it on that horse?

A. I think I did.
No cross-examination.

FRANK M. HEATON, sworn and examined.

By Mr. CARRINGTON:

Q. Will you state where you reside?
A. 462 Eleventh street, in this city.
Q. What is your present occupation?
A. I am a clerk in the General Land Office.
Q. How long have you occupied that position?
A. About six years.
Q. What State are you from?
A. Indiana.
Q. State, if you know a public building here formerly used as a theatre, called Ford's theatre?
A. Yes, sir.
Q. Where did you reside in 1865?
A. On the northwest corner of Tenth and F streets.
Q. How near is that to Ford's theatre?
A. About half a square, on the opposite side of the street.
Q. State to the jury where you were on the day of the assassination of the President.
A. I was living in that house.
Q. State if you were at your house at night.
A. I was.
Q. At what time?
A. I was there all the evening, except about half an hour, when I was absent at the theatre.
Q. Do you remember when the President's carriage came to the theatre that night?
A. Yes, sir.
Q. Did you recognize the carriage?
A. Yes, sir; I saw the President and his wife and the party get out of it.
Q. State where you were standing at that time.
A. In front of the theatre.
Q. How far from the building?
A. On the pavement, a few feet from it.
Q. I will ask you if, during that time, your attention was attracted to the crowd, either going in or coming out of the theatre, or coming from the restaurant in that vicinity, and if you saw any face that attracted your particular attention?
A. I saw one face at the time that attracted my attention particularly.
Q. Go on and state what you did see.
A. At the time the President's carriage drove up, I saw a half a dozen, or a dozen, persons come round it from the restaurants in the vicinity. On last Tuesday week I came into court and saw the prisoner for the first time. On looking at him I saw a very distinct resemblance between the face I saw that night and his own.
Q. State, if you please, where you saw the prisoner.
A. In front of Ford's theatre on the night of the 14th of April, 1865.
Q. About what time was that?
A. Between a quarter of eight and a quarter past eight.
Q. Did you know any person in whose company he was at that time?
A. No, sir.
No cross-examination.

THEODORE BENJAMIN RHODES, sworn and examined

By Mr. CARRINGTON:

Q. State where you live.

A. I am living at the present time east of the Capitol.

Q In this city?

A. Yes, sir.

Q. How long have you been living here?

A. Since 1862. I was away but a very short time.

Q. What is your occupation?

A. Repairing of clocks and watches, and working in the garden that I have adjoining my house.

Q. State whether you were in the city of Washington on the day of the assassination of President Lincoln.

A. I was.

Q. Do you know this building on Tenth street, between E and F, called Ford's theatre?

A. Yes, sir.

Q. State, if on the day of the assassination you were in that neighborhood.

A. I was in Ford's theatre on the day of the assassination.

Q. State as near as you can what time in the day.

A. As near as I can impress it upon my mind it was within half an hour of twelve o'clock, when I entered the building.

Q. After entering the theatre, state if your attention was directed by anything you saw going on in one of the private boxes.

A. I went in merely to look at the theatre. I went up the steps to the second floor; went down in front where the circle was, to look upon the stage; whilst there I saw one of the box doors open a little and shut. I was anxious to see from that point of view, and supposing some one was in there, having heard some one stepping about, I went down to the box and looked out from that point. As I approached the box whoever was in there walked away out of the box, and I entered and looked from that point on the stage. I had been looking there about a minute or two when the same person, I suppose, who went out of the box returned and spoke to me. He said he was connected with the theatre. We then had a few words together, when my attention was again drawn to the scenery on the stage. They had a curtain down that had recently been painted, I believe, and I stood there looking at that. Then I heard this man behind me doing something. In turning around to see what it was he was doing—I supposed he was looking down as I was—I noticed that he had a piece of wood; whether he had it put in under his coat or was taking it out I cannot say. The piece of wood was about three feet long and about as wide as my two fingers—maybe a little more in the centre—slanting a little towards each end from the centre. As I turned round he said, "The President is going to be here to-night." That was the first intimation I had of the expected presence of the President that night. I said, "He is?" He then said, "We are going to fix up the box for his reception. I suppose there is going to be a big crowd here, and we are going to endeavor to arrange it so that he won't be disturbed." He then fixed this piece of wood into a small hole in the wall there as large as my thumb. I should think the hole to be an inch or an inch and a half long, and about three-quarters of an inch wide. He placed one end of this stick in the hole and it being a little too large took a knife and whittled it down a little. He also gouged out the hole a little for the purpose of making it fit. Then he placed it against the panel of the door across to the wall, forming an angle. He says, "The crowd may be so immense as to push the door open, and we want to fasten it so that this cannot be the case." He asked me if I thought that would hold it sufficiently tight. I told him I should judge that it

would hold against a great pressure; that a hole would be punched through the panel of the door before it would give way. The wood was either oak or of North Carolina pine. I am not acquainted with that kind of wood, but I am rather of the impression it was North Carolina pine, which is a very tough wood, I believe. After he had fitted that to suit him we had a few words more together. I then heard some one come across the stage, back of the curtain.

The DISTRICT ATTORNEY. You have spoken of this interview with a person. I will ask the prisoner to stand up here. [The prisoner did so.]

Q. State if that is the man, (pointing to the prisoner), and whether you saw him there?

A. I should judge that was the man.

Q. Have you any doubt about it?

A. No, sir.

Q. State all that occurred.

A. I thought it was singular that the proprietor of the theatre could not afford a lock for a box of that kind. That was what passed in my mind.

The DISTRICT ATTORNEY. We only want what occurred; we do not desire to have your thoughts.

A. I heard some one passing behind the stage curtain. This man with whom I had been talking as soon as he heard this noise behind went immediately out of the box, then a short thick set man came in, a man I should judge a little taller than I am and good deal stouter. He hallooed for some one.

Q. Who hallooed?

A. This man that came in. He says, "halloo, halloo, Ned," or Dick, I don't know which. I think however, it was Ned. "Halloo, Ned, come here, bring out them things;" but the man did not answer that he was hallooing for. He repeated the call some three or four times, may be more. Finally I heard some one say, "Halloo," away down back by the curtain, he said "come here right off," or something to that effect. Then the man came up stairs. Where it was I don't know, it was back of this box leading from off towards the stage. I think he had one of these black satchels about eighteen inches long with something in it. This thick set man says to him, "We are behind time." He said that they had not heard that the President was going to be there until about an hour before, and that they had but a very short time in which to fix up for the occasion. He says to this slim man, "Go down to my office" (or room, I don't know which he said,) "and bring up that big easy chair," and I think he said big rocking chair. The man replied that he did not think he could carry it it was so heavy. This other man replied, "Oh, yes, you can carry it;" and I think he told him that there was some one down there who would help him. Anyhow he went and brought it.

Q. What became of the prisoner? Was he there during the whole time?

A. No, sir, he went out before they came into the box.

The DISTRICT ATTORNEY. I do not want you to state anything that occurred after he left.

Mr. BRADLEY. Oh, we don't object.

The DISTRICT ATTORNEY. But we don't care about having anything except what was said in his presence.

Cross-examined by Mr. BRADLEY:

Q. What time of day do you say this was?

A. I should judge it was between 11 and 12 o'clock. I should think it was about half past eleven, from other occurrences I know of that happened. I remember that shortly after I left there I looked at my watch and it was then either five minutes of twelve or five minutes past twelve, I do not know which; but I know that the bells rung for twelve o'clock, and I looked at my watch to see how it agreed with the time.

Q. How long were you there altogether?

A. I must have been there about half an hour.

Q. How long were you there with these people fixing the box after this man went away?

A. They went out and came in once or twice themselves. I was there but a few minutes after they came there the last time.

Q. How long were you there after the prisoner went away?

A. He went out and in the box two or three times while I was there.

Q. The last time after he went away?

A. I should think about fifteen minutes; maybe not so long as that.

Q. Then were you there about fifteen minutes when they came to fix the chairs and so on?

A. Yes, sir.

Q. You were there about fifteen minutes before that time?

A. I should think somewhere in that neighboroood.

Q. What became of the man who was there when you first went in?

A. As I approached the box this man, whoever he was—I only got a glimpse of him as he went from the box—went out. I went down in the box and was looking on to the stage when he returned and spoke to me. I supposed it was the same man, but I cannot say positively whether it was or not.

Q. How long after this man went out of the box the first time, when you caught a glimpse of him—how long before the prisoner came in?

A. I should think it was not over from three to five minutes.

Q. You stood by and saw him fit this thing in?

A. Yes, sir.

Q. He talked freely to you about it?

A. He told me what I have said.

Q. What sort of a coat had he on?

A. He had on a black coat.

Q. What you call a frockcoat?

A. A frockcoat, I think.

Q. Was it long enough for that stick to be stuck away under it?

A. I don't know how far the stick was up under it. He held it in this way [describing the position.]

Q. Did he have anything on his head?

A. I think he had on a small black hat—what is called a jockey hat, I think!

Q. Had he any beard on his face?

A. I think he had no beard—very little, if any.

Q. Do you recollect whether he had any or not?

A. I could not say for a certainty. I think, to the best of my knowledge, very little. I think it was a kind of down on the sides here, or over his lips. I cannot say which.

Q. Do you recollect the color of it?

A. It was of a very light color. After he spoke of being an actor I took more notice of the man, thinking what kind of an actor he would be.

Q. How much light was there in that place?

A. Well, I do not know. There was quite as much as there is here.

Q. Enough to enable you to distinguish persons down on the stage very plainly?

A. Yes, sir, if I could see anybody there.

Q. Was it so light that you could see that picture on the scenery there?

A. Yes, sir.

Q. Where were you standing when you first heard this noise in the box?

A. Near the circle; about half way down where it goes below. I was in the circle looking down toward the stage.

Q. Right opposite the middle of the stage?

A. Yes, sir.

Q. From there could you distinguish persons on the stage and in this box?

A. I do not know whether I was on my way going out when I saw this box door was open and shut, or whether I was going down from there to get a better sight. Which ever way it was, I saw the box door open and shut a little and heard some person trampling there, and, as I thought, going down to the box.

Q. Do you remember which side of the stage that box was?

A. I cannot tell for a certainty; but I can give you my opinion of it.

Q. Do you recollect whether there was any box above or any box below this one, or was it on a level with the stage?

A. I did not notice that. I think it was above the stage.

Q. How near did you stand to the front of the box?

A. I do not know the distance.

Q. You were looking at the scenery when you were in the box. How far was it to the scenery you were looking at?

A. It must have been twenty-five or thirty feet; I do not know the distance; I never measured it.

Q. Were you here when the trial of the conspirators before the military commission took place?

A. I was.

Q. Were you summoned as a witness there?

A. No, sir.

Q When did you first mention these facts?

A. I do not know as I mentioned them at all; I might have spoken to my wife at the time I went home; I spoke to my wife of the fact that the President was expected at the theatre that night, and she made some remark to the effect that it was not a very good place for the President to be.

Mr. BRADLEY. I do not ask you about that, but as to when you first communicated the facts you have here stated.

A. I do not know as I ever spoke of them, unless I might have mentioned them to my wife.

Q. How did they get to find out you knew it?

A. I addressed a line to the Attorney General, I think, to the effect that I knew something that I supposed would be of account—whether in favor of the prisoner or against him, I did not know. I had not then seen the prisoner.

Q. When was that?

A. I wrote it a week ago last Sunday, but I did not send it at the time I wrote it.

Q. Up to that time, so far as you recollect, you did not mention it to anybody?

A. Not that I recollect, unless to my wife on the day of the assassination on going home from the theatre, and I do not know as I spoke to her even then about it.

Q. You say you did not know whether it would be of an advantage to the government or the prisoner, as you had not seen him since?

A. Not to know him.

Q. Did'nt you read the evidence at the conspiracy trials?

A. The greater share of it.

Q. You knew they were trying to find out something about the fixing of that bar?

A. I read that there was a man who gave that evidence in, but I knew what he said about it was of no account at all.

Q. Did not you know they were trying to find out who fixed that bar?

A. I believe that I did read that that man did see that bar fixed, but I do not know what the evidence is at present.

Q. You never told anybody then of what you had seen at that time, or what you could prove?

A. I do not know as I did; I did not think it of any account at that time.

By the DISTRICT ATTORNEY:

Q. You say you recollect these incidents and you wrote a letter to me about them?

A. I wrote it to the Attorney General or the District Attorney; do not know what your position is in particular.

Q. And you then came to the court?

A. I came after being summoned.

Q. Did you know the prisoner as soon as you saw him?

A. I knew this to be the man the first time I saw him.

Q. You say that the prisoner, in the course of this conversation that you have detailed to the jury, stated that he was an actor?

A. He said he was connected with the theatre.

Q. When he made that remark was there anything peculiar about his face that attracted your attention?

A. I thought, after looking at the man—I generally take a good square look at a man if I take any notice of him at all—I say, I thought, after looking at the man, that he might learn things pretty easily, but he would not make much of an actor; he had not much expression in his face, which I always thought that vocation demanded. He was very wide through the top of the head, and had what I call "lantern jaws" running down pretty thin and meagre, which would not give him a great deal of expression as an actor. This is what passed in my mind at the time.

By Mr. BRADLEY:

Q. You have been asked about writing a letter to the District Attorney. Did you have any conversation with him at any time after you wrote that letter?

A. I have seen him since.

Q. Where did you see him?

A. I have seen him in the ante-room here and other places, and whilst passing backward and forward through the halls.

Q. Didn't you know he was District Attorney?

A. I did not; I knew he was one of the lawyers connected with this trial. What position he held I did not know.

Q. Did you hold conversation with any one else?

A. I held conversation with this young man here (pointing to Mr. Wilson, assistant district attorney.) I did not know what his position was. He said he was connected with this prosecution.

Q. Did you have conversation with anybody else?

A. I spoke something to my wife about it, and she remarked she guessed I had better have held my tongue.

Q. Did you speak to anybody else except your wife and those whom you have named?

A. Not that I remember of.

By the DISTRICT ATTORNEY:

Q. (Good humoredly:) Did you talk to this young man? (Pointing to Mr. Pierrepont, of counsel for the prosecution.)

A. Yes, sir; I talked when he was by at the time; there was one who came into the room where we were with some letters, I believe.

By Mr. BRADLEY:

Q. The three gentlemen here and your wife are the only persons you have spoken of in regard to this matter?

A. Yes, sir.

Q. Describe the appearance of this party that you say said he was an actor

A. He said he was connected with the theatre. I supposed, of course, he was an actor.

Q. Did not you say he had a hat on?

A. He had one of these little jockey hats which just cover the crown of the head, and hardly that.

By a Juror:

Q. Where did we understand you to say this person went who left the box as you were approaching it?

A. He walked out back as I approached the box, but returned very quick.

Q. Did he appear to go away, to leave the box?

A. Yes, sir; he left the box; I just got a glimpse of his back as I entered.

Q. He appeared to leave the box entirely?

A. Yes, sir.

By Mr. BRADLEY:

Q. He came back with this stick under his coat?

A. I do not know whether he had the stick under his coat or not; I do not know where he had it.

Q. Did the stout man appear to go off in the same direction in which the other man came up?

A. Yes, sir; it sounded like it.

By a Juror:

Q. Have you seen the stick that you have described, since?

A. No, sir.

Q. You say it was slanting at both ends?

A. It was a little bevelled at each end from the centre. I remember that it was of a shape to stand a good deal of pressure.

By Mr. BRADLEY:

Q. Didn't you say the hole in the wall was about as big as your thumb?

A. Yes, sir; about as wide as my thumb, and about an inch or an inch and a half long. It was doved right in the plastering.

Q. And that stick was made to fit into that?

A. He whittled the stick a little, and then, I think, took and gouged the hole in the wall a little. Then he placed the other end against the panel of the door, as I supposed, to try the length of it.

The court here took a recess for half an hour.

AFTERNOON SESSION.

DAVID H. BATES—age, twenty-six years—sworn and examined.

By Mr. PIERREPONT:

Q. Look at these papers, (two letters of the prisoner to witness Weichman, dated respectively November 12, and September 21, 1864, with the card of Booth and card of Surratt, heretofore placed in evidence,) and say whether you have seen them before.

A. I have seen the card signed Booth, and the two letters signed Surratt; I have not seen the card signed Surratt.

Q. Will you state to the court and jury how you came into possession of that letter? (Letter directed to A. G. Atzerodt, Washington, D. C., postmarked New York, May 15, after the assassination.)

A. I first saw this letter in the War Department mail shortly after this date. I have no distinct memory as to the exact date.

Q. Did you put any mark on the envelope?

A. I put on the upper left-hand corner the initials "E. L. S."

Q. Do you find them there now?

A. It was in pencil and has been erased; I can see it, however, and that it is in my handwriting.

Q. Will you tell me where you were when you opened that envelope?

A. I did not open it.

Q. Was it opened in your presence?

A. I do not think it was opened in my presence.

Q. What do you remember about it?

A. I remember that it came in the mail, and that I put the initials "E. L. S." in the corner, in order that it might go to the care of E. L. Stanton.

Q. Did you examine it?

A. I examined it.

Q. Look at the paper and see if it has had anything done to it; whether the paper is in its natural state.

A. I see the paper is not as it was when I saw it first.

Q. Do you know the handwriting the letter is in?

(Question objected to by Mr. Bradley until witness states his information on the subject of handwriting.)

Mr. PIERREPONT. I will go fully into that.

Q. What is your occupation?

A. My occupation is that of a telegraph operator.

Q. Were you engaged in the War Department at any time?

A. I was in the War Department telegraph office—in charge thereof—during the war.

Q. How many years?

A. Over five years; I went there first in May, 1861, and left in August, 1866.

Q. What were your duties there?

A. During all that time, except, probably, at first, I was in charge of the office, as chief operator or manager.

Q. What duties does that position involve?

A. I was generally in charge of the office, and forwarded telegrams; I also had charge, from June, 1862, until I left, of cipher telegrams.

Q. Tell the court how much experience you had in that particular.

A. During that time I deciphered and assisted in deciphering a great many cipher letters and telegrams, a great many of which were supposed to be in disguised handwriting, and which came to me through being captured from the enemy, from blockade runners, and in other various ways.

Q. Then what has been your experience in deciphering and detecting handwriting?

A. My experience has been very great. There has hardly been a week but I have had the opportunity of deciphering letters and examining handwriting.

Q. In that department of expert, what would you say of your experience and your knowledge? have you great knowledge as an expert?

A. Yes, sir; I have.

Q. Can you say in whose handwriting that is? (letter directed to Atzerodt.)

A. I ought to know it.

The court suggested the first question should be whether the witness knows the handwriting.

Q. What knowledge have you of the handwriting? Give the sources of your information; whether you have seen the party write, or have seen writing you know to be his?

Q. I have never seen the party who wrote this write. I have seen handwriting signed by that party. I believe, I know the handwriting of the slip of paper before me, and that it is written by the same party to whom I refer.

Mr. BRADLEY said that was not evidence.

The COURT said the witness could state whether he had ever seen the party write, or whether he had in his possession letters acknowledged by him to be in his handwriting.

WITNESS. I have never seen the party write.

By Mr. MERRICK:

Q. Have you ever received letters from that party?

A. No, sir.

Q. Have you ever seen letters signed with his name which he acknowledged to be his?

A. No, sir.

Mr. PIERREPONT. Now what is the source of your knowledge of the handwriting.

Mr. BRADLEY asked whether it was the intention to prove the handwriting by comparison with other papers which had been exhibited to witness.

MR. PIERREPONT replied in the affirmative.

MR. BRADLEY said the question then was whether the papers could now be introduced and the handwriting proved by comparison with other papers received by other parties.

MR. PIERREPONT said the rule of law upon that subject was very well settled in England and in this country. He expected to prove the handwriting of this letter by comparison with the letters shown witness, dated November 12 and September 21, 1864.

MR. BRADLEY said the witness Weichman had sworn he believed these papers to be in the handwriting of Surratt. The question before the court was whether a comparison of these letters, under these circumstances, could be made by the witness.

MR. MERRICK said that if witness was in this manner allowed to identify, of course the defence would be permitted to bring evidence to rebut the testimony of Weichman, identifying the handwriting of the letters as the handwriting of the prisoner.

THE COURT replied in the affirmative and said he would receive the evidence.

MR. BRADLEY said the defence reserved an exception to the ruling.

Q. Now state in whose handwriting the interior of that letter directed to Atzerodt is?

A. I believe it is in the handwriting of Surratt, the prisoner.

Q. Look at the envelope and state in whose handwriting the direction is, if you know?

A. The same.

MR. PIERREPONT then read in evidence the envelope, as follows:

"A. J. Atzerodt, Washington, D. C.;" postmarked "N. Y., May 15, 1865."

Q. When did this come into your possession?

A. About May 16 or 17, 1865.

MR. PIERREPONT then read in evidence the contents of the envelope as follows:

"S. P.—— C. R. —— all right —— no hurry —— Tony."

Q. So far as you know I suppose, Atzerodt did not ever receive this letter?

A. No, sir.

Q. Will you state to the jury, from your experience, whether or not it is difficult to disguise one's handwriting?

A. It is exceedingly difficult.

Q. You may give the reason. Is there anything that belongs to every man's hand as there is to the expression of his face, walk, &c.

MR. BRADLEY. That is not a proper question.

MR. PIERREPONT to witness. Give your own reason.

WITNESS. I cannot readily give the reason. I know it is so from my own experience in handwritings.

Q. Is there something about every man's hand peculiar to himself?

A. Yes, sir.

Q. You may look at this letter which has previously been read in evidence, (signed Charles Selby,) and state whether, in your opinion, the writing is in a natural hand, or in a disguised hand.

A. I consider it in a disguised hand.

Q. Have you any knowledge in whose hand it is; if so, state from what you derive your knowledge.

A. I have such a knowledge.

Q. Now tell how you derive it?

A. From a comparison with the two telegrams which I have in my hand now.

Q. Who are the telegrams signed by?

A. They are signed by J. Wilkes Booth.

Q. Will you tell me in whose handwriting the Charles Selby letter is?

A. In that of J. Wilkes Booth.

Cross examined:

By Mr. Merrick:

Q. Did you ever see Mr. Booth write?

A. No, sir.

Q. Did you ever see any of his writing, except these two telegrams?

A. Not that I remember.

Q. And from those two telegrams you say you take this to have been written by Booth?

A. Yes, sir.

Q. Will you tell the jury what feature of resemblance there is between them?

A. There is a resemblance between the capital letter "L," in the address, "Dear Lewis," and in the capital "L," in O'Laughlin's name in the telegram. I also notice a resemblance in the last stroke of the "L," which is made straight out, or nearly so.

Q. You see a resemblance in the capital "L's," and in the tail of the "L" coming out straight; tell me of any other feature of resemblance?

A. Another feature is in the capital "E," in "Esq.," in the letter, and in "Exeter," in the telegram; also in the word "English."

Q. Tell me wherein they are alike?

A. They are alike in their resemblance. I do not know any particular mark in either, on which I could give an opinion. They only resemble each other.

Q. You think they resemble each other in their general features?

A. Yes, sir.

Q. State to the jury if the two "E's," to which you have referred in the telegram, stand as an independent letter without a line connecting them with the adjoining letter, or whether they are connected and fall apart?

A. They are disconnected.

Q. State whether or not the "E," in the word "Esq.," is a disconnected letter, or whether it is connected with the adjoining letter in the same word?

A. That is disconnected. The pen was lifted when the second letter of the word was formed.

Q. Do you notice any other feature of resemblance?

A. I notice in the Selby letter also, two other words commencing with a capital "L," bearing the same peculiarity which I have observed in the "L's" of the Booth telegram. I observe also that the capital "T," in the telegram, has the same peculiarity—that in this the capital "H" has a sort of catch as the pen touches the paper first.

Q. Then you notice the resemblance in the "T," the "L's," and the "E's;" is the resemblance in these letters the means by which you identify the handwritings?

A. From this resemblance, and more from the general character of the handwriting, which I cannot describe from any distinct peculiarity.

Q. Was this letter open when it came into your possession?

A. No, sir. It was sealed, in the War Department mail.

Q. I suppose it was put into that mail because Atzerodt was in charge of the government at that time?

A. That was the supposition I had.

Q. When did you first see the enclosure of that envelope?

A. I saw it the same day that it came to the office.

Q. Do you know who opened it?

A. I do not.

WILLIAM S. THOMPSON, sworn and examined:

By Mr. PIERREPONT:

Q. What is your occupation?

A. Druggist, corner of Fifteenth street and New York avenue.

Q. How long has your store been there?

A. Since 1859.

Q. Was Herold there as a clerk for you? I mean Herold who was tried as one of the conspirators?

A. He was.

Q. Will you tell the jury from what date to what date he was your clerk?

A. I cannot tell whether it was in 1862 or 1863. He came with me about the 1st of March, and was discharged about the 4th of July following. I do not remember which year.

Q. Have you any means of knowing?

A. I could ascertain by reference to my book.

Q. Will you examine and give the dates subsequently?

A. I will do so.

Q. Do you know his handwriting?

A. I am tolerably familiar with his handwriting.

Q. Will you state whether President Lincoln during the time he was there, or before or after, obtained his medicines of you?

A. He was in the habit of getting his medicines there, and I suppose he must have got some during the time Herold was there.

This evidence objected to by Mr. BRADLEY as not coming up to the rule.

Mr. PIERREPONT said he supposed witness understood the reason for which he was called, and desired him to return to his store, examine his books, refresh his memory, and report again on Friday morning.

WILLIAM NORTON, residence Charlotte Hall, St. Mary's county, Maryland, sworn and examined.

By Mr. PIERREPONT:

Q. When did you come to this city?

A. In 1861.

Q. Do you live in this city now?

A. No, sir. I live at Charlotte Hall.

Q. When did you come here as a witness first?

A. Two weeks ago last Monday.

Q. Did you see anyone connected with the examination of this case?

A. I saw Mr. Wilson, and Mr. Carrington; also Judge Holt, and Colonel Barr.

Q. Will you state where you lived in the month of April, 1865?

A. At T. B, Prince George's county, Maryland.

Q. On the 13th, 14th, and 15th of April who did you see connected with the prisoners in the trial of the conspirators?
A. None of them.
Q. Did you see Booth?
A. No, sir.
Q. Did you see Herold?
A. No, sir.
Q. Did you see Surratt?
A. No, sir.
Q. Did you see Mrs. Surratt?
A. No, sir.
Q. Had you anything to do with any arms, or did you see any arms?
A. Not at that time.
Q. When did you see any arms?
A. I saw some arms in the month of March, 1865.
Q. Where did you see them?
A. I saw them at T. B.
Q. Who brought them there?
A. David Herold brought them there.
Q. What did he bring?
A. He brought some guns.
Q. How many?
A. Two.
Q. Did he bring anything else?
A. He brought two carbines.
Q. Anything else?
A. He brought a pistol.
Q. What else?
A. He had a knife with him.
Q. Any ammunition?
A. Yes, sir.
Q. What else?
A. He had a rope with him.
Q. Any other thing?
A. He had a wrench.
Q. Anything more?
A. He had a horse and buggy.
Q. What time in the day did he come?
A. He came in the night.
Q. What time in the night?
A. About 8 o'clock.
Q. What did he do with the things he brought?
A. He took them out of his buggy.
Q. What then?
A. I carried them into the bar-room.
Q. Then what did you do with them?
A. I did not do anything more with them that night.
Q. Did you or he do anything more with them?
A. Yes, sir.
Q. Did he the next morning?
A. He fired his pistol off.
Q. Did he do anything more?
A. He went away after breakfast.
Q. Did he take the arms and ammunition all with him?
A. Yes, sir.
Q. Do you know which way he went?

A. He started towards Washington.
Q. Do you know where he stopped?
A. No, sir.
Q. Did you ever see any of these afterwards?
A. I saw two carbines, which I supposed were the ones I saw there, in the provost marshal's office, on 14th street, a few days after the assassination.
Q. Between the time Herold took them away and the time you saw them in the provost marshal's office, did you see them?
(Question objected to by Mr. Bradley. The witness did not pretend to identify the carbines at all.)
The COURT said he supposed they were going on to identify the carbines. Question repeated.
A. I never saw the carbines after Herold took them off until I saw two carbines in the provost marshal's office.
Q. Did you see the pistol?
A. No, sir.
Q. Did you see the ammunition?
A. No, sir.
Q. Did you see the knife?
A. No, sir.
Q. Did you see the rope or the wrench, or any one of the things?
A. No, sir.
Q. Or the horse and buggy?
A. No, sir.
Q. Where did you next see Herold after the night he was there with the arms?
A. I have never seen him since.
Q. Who was with him?
A. He was by himself.
Q. Did he tell you where he was going?
A. He said he was going down to Benedict ducking.
Q. Did he tell you what he was going to do with the arms?
A. No, sir.
Q. He told you nothing about it?
A. No, sir.
Q. At what time in the day did he go towards Washington?
A. It was after breakfast, between seven and eight o'clock.
Q. How far was your place from Surrattsville?
A. Five miles.
Q. Did he go in the direction of Surrattsville?
A. I could not say. He started towards Washington. There are roads that turn off after leaving T. B.
Q. Are they both in the same direction?
A. No, sir; the roads start together, and then they fork off.
Q. Do you know which fork he took?
A. No, sir.
Q. What did Herold say to you about Surratt?
A. He asked me if Mr. Surratt had been there. I told him he had not. He said he expected he would be there.
Q. Did he tell you at what time he expected Surratt there?
A. He said he expected him there that night.
Q. What time in the night was it that he said that?
A. That was shortly after he came there.
Q. Did Surratt come that night?
A. He did not.
Q. Did you see him that night?

A. No, sir
Q. When did you see Surratt after that?
A. I saw him on the 3d of April, 1865.
Q. Where did you see him?
A. At T. B.
Q. Which way did he come from?
A. He came from down the country.
Q. South, west, or east?
A. Southeast course.
Q. Did he tell you where he came from?
A. No, sir.
Q. Did he tell you where he was going?
A. No, sir.
Q. Did you see him after the 3d of April, 1865?
A. No, sir.
Q. What had he with him—what arms?
A. I did not see any.
Q. Was he on horseback, on foot, or no the stage?
A. He came on the stage.
Q. What time did he leave on the 3d of April?
A. He might have left at half past two or three o'clock.
Q. What stage?
A. The Leonardtown Washington stage.
Q. Was that a stage which went to Washington direct?
A. Yes, sir.
Q. Was that the last you saw of him?
A. Yes, sir.
Q. Did he tell you anything at that time of what he was going to do?
A. No, sir.
Q. Did he tell you where he had been?
A. No, sir.
Q. Did he tell you he had been to Richmond?
A. No, sir.

Mr. BRADLEY said it was time to interrupt this examination. The general question had been answered, and these questions were most direct and leading.

Mr. PIERREPONT said they were direct and leading, and the reason was obvious.

Objections overruled.

Q. Did he tell you anything about Richmond?

Question objected to for the same reason.

The COURT said as a proper mode of testing whether the question was leading or not he could not himself tell what answer the counsel sought, and if he could not probably the witness could not.

Question repeated.

A. No, sir.
Q. Did you have any conversation with him?
A. He paid me two dollars and a half. There was no special conversation that I remember.
Q. Did he say anything to you?
A. Nothing that I can remember.
Q. Did he tell you he had two dollars and a half for you?
A. No, sir; I asked him for it.
Q. How long had he owed it to you?
A. A short time; two or three months.
Q. Was he there two months before?
A. I could not say two months. He was there that winter.

Q. What was he doing there?
A. No particular business.
Q. What general business?
A. He was acquainted there.
Q. Who did you see him with there?
A. He was there with himself.
Q. Was he entirely alone?
A. Yes, sir.
Q. Did you see him talking to nobody at all?
A. He talked with everybody when he came.
Q. How long did he stay there?
A. He staid there over night.
Q. Was that what he owed you for?
A. Yes, sir.
Q. And that is what you collected?
A. I collected a bar bill and house bill.
Q. Who staid there that night?
A. Nobody that I know of.
Q. Was there no traveller in the house?
A. There may have been.
Q. Who was he?
A. I do not know.
Q. Do you remember anybody except him?
A. No, sir
Q. Did you see him with Atzerodt?
A. Yes, sir. Atzerodt has been with him. I saw Atzerodt with him there. I did not see them come together or go away together; I saw them in the bar-room together.

DAVID H. BATES recalled and further cross-examined.

By Mr. MERRICK:

Q. Look at the register now shown you, (arrival book of St. Lawrence Hall, Montreal, Canada, 1865,) April 6, and also on the 18th, and see if you can find any handwriting with which you are familiar.
A. I recognize two names.
Q. What are they?
A. The first is Frank Drummond, and the next is John Harrison, Washington, D. C., on April 6.
Q. Is either of these in disguised handwriting?
A. No, sir. I also find the handwriting of the same men on April 18.
Q. Read the entire entry.
A. On the 18th the entry is simply John Harrison; on the 6th it is John Harrison, Washington, D. C. Neither of these is a disguised signature.

By Mr. PEIRREPONT:

Q. Will you tell the jury in whose handwriting these entries are?
A. I think it is the handwriting of Surratt, the prisoner.

The district attorney stated that the prosecution would be able to close its evidence to-day if the witnesses were all here; that two or three who were in the city did not answer, and one sent for to New York had not arrived. He proposed, therefore, that the court should now take a recess. The court accordingly took a recess until Friday next at half past ten a. m.

JULY 5, 1867.

The court met at 10½ o'clock a. m.

Mr. Pierrepont proposed to read from and put in evidence an almanac for the year 1865, for the purpose of showing when the moon rose in Washington on the evening of the 14th of April, and the condition of the moon as to fulness [Mr. P. held in his hand a copy of the Tribune Almanac for the year 1865.]

Mr. Bradley objected to the reception of the copy produced in evidence as not authentic.

Mr. Pierrepont said, of course it would be subject to any correction that might be made, if any could be made.

The court remarked that anything contained in an almanac admitted to be genuine and authentic could be received in evidence, and suggested that the American Almanac, prepared at the State Department, would be received as authentic.

Mr. Bradley suggested the report of the Smithsonian Institute.

After further conversation between the counsel and the court, it was determined to send for a copy of the American Almanac.

JOHN C. THOMPSON, residence T. B., Prince George's county, Maryland, sworn and examined:

By Mr. PIERREPONT:

Q. Have you been in the city during this trial?
A. Yes, sir.
Q. Have you been examined anywhere?
A. Yes, sir.
Q. Where did you live in the spring of 1865?
A. At T. B.
Q. What were you doing there?
A. I was keeping a hotel there.
Q. What was the name of it?
A. The "T. B. Hotel."
Q. Do you remember anything that happened there at that time connected with Herold?
A. Yes, sir.
Q. Tell us what it was.
A. Herold came there some time in March; I do not know what time it was in March, 1865.
Q. What did he bring with him?
A. A sword, a couple of carbines, and a couple of double-barrel guns.
Q. Anything else?
A. I remember nothing except a revolver.
Q. Nothing else?
A. Nothing else that I know of.
Q. Who came with him?
A. Nobody, at all.
Q. What did he come in?
A. He came in a buggy.
Q. What did he do with those arms?
A. He put them in the bar-room until the next morning.
Q. What did he tell you?
A. He told me he was going down on the Patuxent river shooting ducks.
Q. Did he tell you he expected anybody there that night?
A. Yes, sir; he said he expected John Surratt there.
Q. What did he do in the night?
A. Nothing, at all. He came there about 8 o'clock; our supper was over,

and ordered supper. They had supper prepared for him, and he afterwards went to bed.

Q. Did Surratt come there that night?

A. No, sir.

Q. What happened the next morning?

A. The next morning, he got up, took his guns, and came back towards Washington.

Q. Do you know which road he took; the roads fork this side of your place, do they not?

A. I do not know which way he took.

Q. Does one road go to Surrattsville?

A. One road goes to Surrattsville, and the other to Piscataway.

Q. You do not know which road he took?

A. I do not.

Q. Did anybody go away with him?

A. Not a soul.

Q. Did you know Atzerodt?

A. I knew him.

Q. When did you see him there?

A. The last of February or first of March, 1865; I do not recollect which.

Q. When did you see Surratt there?

A. I never saw him there, in March, that I know of.

Q. When did you see him there?

A. He passed my place the 3d of April.

Q. Did he stop?

A. He stopped while the stage was changing horses.

Q. Did you speak with him?

A. I may have spoken to him. Do not recollect distinctly. I think I did speak to him.

Q Did you see Atzerodt there that day?

A. No, sir.

Q. Did Atzerodt stop there, at any time, at your house?

A. No, sir; he never staid over night at my house.

Q. How long did he stay there?

A. The last time he was there, he staid, I suppose, a half hour, or three-quarters of an hour.

Q. What time was that?

A. I do not recollect the date. It was some time in March.

Q. After the 3d of April you did not see him there?

A. No, sir; I do not think I did; I have no recollection that I did.

Q. On the 25th of March, do you remember anything that occurred?

A. No, sir; I do not.

Q. Did you see Surratt that day in a buggy?

A. No, sir; I do not recollect that I did.

Q, On the 26th did you?

A. I do not recollect.

Q. When did you see him?

A. On the 3d of April.

Q. Which way was he going?

A. He was going towards Washington.

Q. Did you know from what point he came?

A. I did not.

Q. Did he tell you anything about it?

A. Not a word.

Q. Do you know how long he stopped at that time?

A. Long enough to change horses and the passengers to get their dinner. I suppose half an hour.

Q. What coach was it?

A. The mail coach—coach belonging to me.

Q. Where did the coach come from?

A. The coach came from Charlotte Hall. The mail came from Leonardtown that morning.

Q. Where from the Potomac was that?

A. It leaves Briton's bay.

Q. That bay runs into the Potomac?

A. Yes, sir; it connects with the Potomac.

WILLIAM S. THOMPSON recalled and examined.

By Mr. PIERREPONT:

Q. Can you give us the date at which Herold was a clerk in your store?

A. From the 1st of March, 1863, until the 4th day of July following.

Q. State whether Mr. Lincoln obtained his medicines there during that time.

A. Yes, sir; he did.

Q. Do you know whether Herold put up any for him?

A. I have examined my books and blotter, to ascertain, as nearly as possible, whether Herold mixed any medicines for him during that time. I find only one article charged by Herold.

Q. Then you have no other means of knowing.

[Mr. Bradley said he could not see the relevancy of this testimony, and desired it to be received subject to his objection.

Mr. Pierrepont said he would endeavor to make it relevant.]

A. I have no other means of knowing.

Cross-examined by Mr. BRADLEY:

Q. Does it follow because the charge was in Herold's handwriting, that he put the medicine up?

A. Not necessarily; no, sir.

Q. What is the date at which the medicine was put up?

A. June 22, 1863—a small vial of castor-oil.

Q. What other clerks had you in the store at that time?

A. I had two others—Clinton M. Sears and Charles McGlue.

Q. Where is Sears at this time?

A. He is dead.

Q. Where is McGlue?

A. He is engaged in a store now on Seventh street, in this city.

Q. In business for himself or as a clerk?

A. As a clerk.

Q. For whom?

A. In a drug store on Seventh street, opposite Taylor's, kept I believe by a man by the name of Cassin.

ANDREW KALDENBACH, residence Washington, sworn and examined.

By the DISTRICT ATTORNEY:

Q. Do you know a place called Surrattsville, in Prince George's county, Maryland?

A. Yes, sir.

Q. How far is it from here?

A. About ten miles from the Navy Yard bridge.

Q. Do you know John M. Lloyd?

A. Yes, sir.

Q. Do you recollect being there some time in the spring of 1865?

A. Yes, sir.

Q. State if at that time you recovered any fire-arm there; and if so, state the circumstances under which you recovered it.

A. Yes, sir; I found a fire-arm there; I lived there then. It was about the 25th of April, 1865, or somewhere thereabouts. I found it in the partition between the plastering.

Q. What did you find?

A. I found a carbine. It had a covering over it.

Q. Describe in what part of the house it was.

A. It was between the dining-room, in the main house, and the kitchen, which was attached to the main building.

Q. Was it concealed?

A. It was right between the plastering in the partition wall.

Q. Describe fully to the jury the examination you made, and what you discovered at that time.

A. There were detectives there. I am not certain what date it was; somewhere about the 25th of April.

(This examination objected to by Mr. Bradley as irrelevant, unless intended to contradict the witness, Lloyd, and the prosecution could not contradict its own witnesses.

The district attorney said the witness need not state what Mr. Lloyd told him.)

A. This detective was there on that night. He told me there was a fire-arm there, and said I must find it. This detective and myself went in search of it, and after searching for it for some time I found it.

Q. Tell the jury how you found it, where it was concealed, and everything about it.

A. I took a hatchet, knocked the plastering loose, and found it between the partitions. After I found it, I went for this detective before I removed it at all. He took it in his possession and carried it off.

Q. Who was this detective?

A. His name was George Cottingham, a government detective, at that time stationed down there.

Q. State how it was you happened to go to that particular place, and find it.

A. It was by the direction of Mr. Lloyd.

Q. Would you know that carbine if you were to see it again?

A. I did not examine it particularly. It had a cover over it; a light and a dark cover.

Q. Did you take the cover off?

A. Only a part of it—enough to show the breech of the gun.

Q. Can you say what kind of a carbine it was?

A. I do not know the name of it.

Q. How often did it shoot?

A. I do not know; I did not examine it.

Q. When did you receive the information from Mr. Lloyd that the gun was there?

(Question objected to by Mr. Bradley, but the objection subsequently withdrawn.)

A. About the 25th of April.

Q. Where were you when when you received it?

A. I was at Surrattsville, at the house.

Q. In what room?

A. I was in the dining room at that time, attending to Mr Lloyd's family. They were sick at that time, and asked me to attend to them for Mr. Lloyd, in his absence.

Q. Was Mr. Lloyd there at that time?

A. He came there that night.

Q. Was Mr. Lloyd in the room at the time you received the information where the carbine was concealed?

A. Yes, sir; he was in the room at that time.

Q. Look at that carbine, [carbine with cover on exhibited to witness,] and state whether that is the one you found.

A. That is the one we found; or at least the cover is the one, and the rope.

Q. Examine carefully, and see if you can state with certainty.

A. I think it is the same one. It is the same cover, the same rope, the same washer, and a similar gun. I could not say it was the same gun.

Q. As far as you now recollect making an examination, does it resemble that gun, in all respects?

A. Yes, sir; a similar gun. If it is not the one, it is one exactly like it.

Cross-examined by Mr. BRADLEY:

Q. I understand you to say a detective came there that night—the 25th of April—about that time, and said there was a gun there that must be found.

A I was informed that it was secreted there, and he told me I was to find it.

Q. Then you got the information from Mr. Lloyd where you were to look for it?

A. Yes, sir.

Q. And then you broke through the partition with a hatchet and found the gun?

A. Yes, sir.

Q. Which was the same description of gun as that?

A. Yes, sir.

ABRAM B. OLIN, associate justice of the Supreme Court of the District of Columbia, sworn and examined.

By Mr. PIERREPONT:

Q. Were you in Washington city on the night of the murder of the President?

A. I was here; yes, sir.

Q. Were you at the theatre the next morning after?

A. No, sir; I was at the theatre that evening, and I was at the theatre, I think, Sunday morning. The assassination was on Friday night, according to my recollection.

Q. Will you tell us what you discovered in that box where the President was murdered?

A. I perhaps might not improperly say that I saw a report that the President had been shot through a door, and I commenced taking preliminary examinations in reference to this matter. I went there personally, in company with Senator Harris and Miss Harris. Rathbone, who was with them at the time of the murder, was disabled by his wound from going there. I went there to examine the premises personally to be able to understand as much testimony as was applicable to the particular transaction. When I got into the theatre, I examined this hole in the door. If you can see this panel (illustrating by a panel of the desk,) I can represent it about as well as any other way by saying that it would correspond with a hole placed right here, right on the corner of the panel. You would scarcely notice it unless your attention was drawn to it. Placing your eye to the hole, it was about the height a person would occupy sitting in a chair inside. I saw that it was bored with a gimlet, and that a penknife had been used to take off the rough surface. The shavings and chips from that hole were still on the carpet, which had not been cleaned, and could be seen as you entered the box. I saw, too, that the entrance into this box from the body of the house was closed by a bar when shut at an angle, and

some person had taken occasion to cut into the plastering of the wall a place into which the end fitted; and with the bar placed in it and the other end against the door, any person pressing against it from the outside, the stronger he would press, the tighter the fastening would become. The plastering cut from that hole was also lying at that time on the carpet, as you went into the box of the theatre. I delivered over the preliminary examinations I had made to the War Department, and that ended my connection with the matter.

Q. What did you find in reference to the condition of the staple on the door that held the door lock?

A. The staple of the lock to the door went into a hasp with screws at each end. The screw at one end had been loosened in such a way that if you shut the door and locked it—I tried the experiment once or twice—you could push it open; you could take one of your fingers and push the door open although locked. One of the screws, the upper one, I think, had been screwed out in such a way that the door would open without any resistance, and without creating any disturbance, if locked.

Q. You tried the experiment?

A. Yes, sir.

Q. Would any person, when the door was thus locked, have noticed that such was the condition of it, unless his attention was drawn to it?

A. O, no; you saw nothing of that on the outside, and you would not see it on the inside without a careful inspection. It was just a little loosened, to that extent that the door could open when gently pressed against.

Q. Then the shavings from the wall and from the hole cut out of the door were all on the carpet?

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. Do you recollect whether you could see inside that box without a light, whether you did not have to take a light?

A. We had a light, but you could possibly see without it. I requested a light to be obtained in order to examine as carefully as I could.

Q. Do you recollect how you got in there?

A. Yes, sir; I recollect how I got in. I do not know how you could get into the box, except by going through the body of the theatre and into the little hall, for there is a kind of hall, according to my recollection, five or ten feet in length, into which the door shuts at an angle and opens back. It is a dark passage and is not lighted anywhere except from the body of the theatre or from the box itself.

Q. You were there in broad daylight?

A. Yes, sir.

Q. Do you know whether the windows were thrown open so as to let in a light from the outside when you were there?

A. I recollect very well that although I think you could see pretty well, you could not see as well as I wanted to with the light through the passage.

WALTER H. COLEMAN, residence Washington city, sworn and examined.

By Mr. PIERREPONT:

Q. What is your business?

A. I am at the head of a division in the office of the Secretary of the Treasury, one of the financial divisions.

Q. How long have you been there?

A. Since 1864.

Q. Do you know George W. Cushing?

A. Yes, sir; he used to be a room-mate of mine.

Q. Were you with him anywhere on the day of the assassination?

A. Yes, sir; the day of the assassination, after dinner, we walked up Pennsylvania avenue.

Q. Did you know Booth before that time?

A. Yes, sir.

Q. How well by sight did you know him?

A. As well as I know any one by sight.

Q. Did you see him that night?

A. Yes, sir.

Q. Will you describe where you saw him, what he was doing, and what you saw?

A. We were on Pennsylvania avenue between Tenth and Eleventh streets, going towards Willards'. We looked around and at first we noticed a very nice little horse, and a person was standing a few feet from him in the gutter. We stopped first to look at the horse; then we noticed the rider, and I said to Mr. Cushing "There is Booth, is he not?" I looked then again and saw that it was. We remarked the pallor of his countenance.

Mr. BRADLEY. You need not state any conversation that passed between you and Mr. Cushing.

There was a little conversation. He was sitting on his horse with his face towards us, and was leaning over talking very earnestly with a man who stood on the curbstone. This was about 6 o'clock in the evening. I recollect taking out my watch to look at it.

Q. What was the style of his conversation, as to earnestness or otherwise?

A. He was bending very low. He was sitting with their two heads very nearly together. He appeared to be talking very earnestly.

Q. Did you notice anything in the expression of his face?

A. Yes, sir; his face was very pale—as pale as if he had got up from a sick bed.

Q. Were any remarks made upon that subject at that time?

(Question objected to by Mr. Bradley.)

Q. You need not state what the remarks were. Simply state whether the fact excited conversation on the subject.

A. His paleness was such as led us to remark upon it.

Q. Describe the man he was talking with?

A. He was a man of ordinary size.

Q. Young or old?

A. He appeared to be a young man.

Q. How dressed?

A. He was dressed in a suit of gray clothes, with a low-crowned hat—a black felt hat—on.

Q. Have you ever seen that man since, before to-day, that you know of?

A. No, sir.

Q. Have you seen anybody to-day that bears any resemblance to him?

A. I would like the prisoner to stand up and turn sidewise.

(Prisoner stood up and turned round.)

He certainly looks like that man.

Cross-examined by Mr. BRADLEY:

Q. Has your attention ever been drawn to the prisoner before this morning?

A. In what way?

[Mr. BRADLEY. In any way.]

A. I knew that he was on trial.

Q. I mean as to personal observations?

A. No, sir; not that I know of.

Q. You think he is about medium height?

A. I think as I saw the man stand on the sidewalk, he looks about the height

of that man (pointing to the prisoner.) You will recollect the sidewalk or curb-stone where he was standing was a little depressed.

Q. Where were you?

A. We were on the crosswalk which crosses the avenue at Eleventh street.

Q. Could you form some idea whether this man was above medium height when you saw the man on horseback leaning over to talk to him.

A. Yes, sir.

Q. And you think he was about medium height?

A. I think so.

Q. You think the prisoner is about medium height?

A. Yes, sir; I think so. I think he is about the height of the man I saw.

Q. And that is about medium height?

A. Yes, sir; that is what I understand.

Q. Did you hear Booth and the person he was conversing with say anything?

A. No, sir; I did not.

Q. Did you pass them?

A Yes, sir; they were standing still, heading towards Willards'. We passed them on the way to Willards' and stopped and looked back.

Q. How near the corner?

A. It was about opposite the rubber store of Allen, Clapp & Co., who used to be there, between Tenth and Eleventh streets.

Q. It was not exactly on the avenue, then, but on the street that turns up from the avenue. Blanchard & Mohun's store is on the corner is it not?

A. Yes, sir; I think D street passes down by McGuire's store. Then there is a little triangular space between D street and the avenue proper. This was at about the point of the wedge where they were standing.

Q. And you were on the crossing leading across D street?

A. Yes, sir.

Q. And they were on the sidewalk which would bring you forty or fifty feet of them?

A. Oh, no, sir; I think it would not be as far as that.

Q. You did not hear any remark made by them?

A. No, sir.

Q. You never saw the prisoner since then until to-day?

A. No, sir.

Q. When you came into court to-day did you recognize him?

A. I had some doubts and have still. I would not like to swear positively that he is the man. Still I have a strong impression that he was.

Q. Did not you ask a gentleman here which was the prisoner, when you came into court, in our hearing?

A. I do not know whether you could hear. I certainly did ask. I did not know in what part of the room the prisoner was.

Q. Did not you ask to have the prisoner pointed out to you?

A. Certainly, I did. I did not know in what part of the room the prisoner was sitting. I might ask the same question about you, not knowing in what part of the room you were sitting, although I know you.

Q. After looking at the prisoner carefully, when you were here, did not you say in our hearing that you could not recognize him?

A. I did not say that loud enough for you to hear. I said I had doubts about it.

Q. And you say you still have doubts?

A. I would not like to swear positively that he is the man; but after looking a second time and seeing him stand up, I think he looks very much like the man.

GEORGE W. CUSHING, jr., residence Washington, sworn and examined.

By Mr. PIERREPONT:

Q. Where are you employed?

A. At the Treasury Department.

Q. In what department of the Treasury?

A. Second Auditor's office.

Q. How many years have you been there?

A. Since 1861.

Q. On the day of the assassination of the President, state where you were in company (if so) with Mr. Coleman.

A. After dinner on the 14th of April, 1865, we took a walk up the avenue, about 6 o'clock. When we were passing about Tenth or Eleventh street, Mr. Coleman turned round and began noticing a horse. I turned round. He says to me, "That is Booth, aint it?" Said I, "Yes." We stood and looked at the horse a moment and went on.

Q. What was Booth doing?

A. The horse was standing still. Booth was on horseback, and he was leaning over the horse's neck talking very earnestly to a man. He appeared to be talking very earnestly, indeed.

Q. What was the look of his face?

A. He looked as if he had been sick.

Q. Did his looks excite remark?

A. Not from me. I think Mr. Coleman noticed that he had been sick, or something of that sort.

Q. Did it excite remark by some of you?

A. I believe we both noticed that he was sick. Mr. Coleman made some remark to me about it.

(Prisoner stood up and turned round, at the request of counsel.)

Q. Does he (the prisoner) look like the man you saw talking with Booth?

A. The man I saw talking with Booth was a young man. I do not know that he resembles the prisoner very much. My attention was directed to Booth at the time.

Q. You state that your attention was directed particularly to Booth?

A. In answer to Mr. Coleman's inquiry whether that was Booth, I looked at Booth, stood a moment and went on with my walk.

Q. You did not give much attention to the man he was talking with?

A. No, sir; none at all.

Mrs. MARY BRANSON, residence Baltimore, sworn and examined.

By Mr. PIERREPONT:

Q. In 1865, where did you live?

A. I lived at No. 16 Eutaw street, Baltimore.

Q. Did you see, while the trials of the conspirators were going on in Washington a man called Lewis Payne?

A. I did.

Q. Will you state whether in January, 1865, and for some time after that, this same man Payne boarded at your house?

A. He boarded at my house in January.

Q. How long did he continue after January?

A. He staid with me about six weeks.

Q. Did you know where he went then?

A. I did not.

Q. Did you see anybody visit him while he was there?

A. No, sir; no one called on him while he was there that I know of.

Q. He lived there quietly, did he?

A. Yes; I kept a boarding-house, and gentlemen were passing backwards and forwards in the house.

GEORGE S KOONTZ, sworn and examined.

By the ASSISTANT DISTRICT ATTORNEY:

Q. You are the general agent of the Baltimore and Ohio railroad, and have been for several years?

A. Yes, sir; I have been in the service of the Baltimore and Ohio railroad, in this city, since April, 1862.

Q. In what capacity?

A. As general agent of the Baltimore and Ohio Railroad Company.

Q. State to the jury at what time the passenger trains for Baltimore left Washington the morning after the assassination.

A. Several of them left on time, I believe.

Q. Give the hours, if you please?

A. The first train left at 6.15 in the morning, the next at 7.30; the third at 8.30, I think. I do not remember if either of the trains was started after that in the morning.

Cross-examined by Mr. BRADLEY:

Q. State whether they went through to Baltimore or not, and what time they went through.

A. They were detained on the road, at the Relay House, by order of General Tyler, who was in command of that post at that time.

Q. For how long?

A. The early trains were detained several hours. I do not know the precise number of hours.

Q. State whether they had any guard on the cars when they left here, whether any detectives were on board, and what precautions were used, and what instructions you received from the military.

A. I was aroused very early that morning by an officer of General Augur's staff, who directed me, by command of General Augur, not to start any train from Washington until further orders. I went back with him to the depot, and gave directions that no trains should leave. When the hour arrived for the 6.15 train to start, they concluded it might go. It was thoroughly searched by officers of General Augur's staff and by men who claimed to be detectives, and guards were placed on each platform of each car.

Q. State whether with each of these morning trains any connection was made at Baltimore with trains going north.

A. They did not make regular connections.

Q. At what time is the 6.15 train due in Baltimore?

A. At 8 o'clock.

Q. Have you official information as to what time it actually arrived there?

A. I do not remember the hour of its arrival in Baltimore. I have the record at my office. It was several hours after time.

Q. Can you state whether or not the first three trains which were delayed at the Relay House went together on to Baltimore?

A. I do not think they went together to Baltimore. They arrived shortly after each other.

Q Did you yourself accompany and assist in the search of the train before it started from Washington?

A. I did.

By Mr. PIERREPONT:

Q. You are quite sure the train which left Washington that morning did not connect with the first train from Baltimore; it did not reach there on time, and could not have connected if that train left on time?

A. No, sir.

By Mr. BRADLEY:

Q. State whether any of your own family were not detained that morning.

A. Yes, sir; my children were in Frederick. They came from Frederick, having been sent for. I telegraphed for my sister to bring them home. They were stopped at the Relay House by direction of General Tyler. There was a train to be started from the Relay House with soldiers, and I telegraphed to General Tyler requesting him to allow my children to come, as they were sick. He knew me very well and I thought he would grant me that favor; but he declined to do so. He said his orders were positive, and he had to obey them.

Q. What time did they reach here?

A. My children reached here in the course of the afternoon.

Q. What time were they due?

A. They were due at 10.20 or 11.30, in the forenoon. I do not recollect with which of these trains the Frederick train connected at the Relay House.

By Mr. PIERREPONT:

Q. At what time in the month—what day of the month—was it that your children reached here?

A. The morning of the assassination—the morning I was called on by this officer.

Q. That was the 15th of April?

A. The 15th, sir.

Q. These circumstances you have mentioned make it perfectly certain that the train that left here did not reach Baltimore in time to connect with the train for the north?

A. Yes, sir; unless the connecting trains were held over for the arrival of our trains to Baltimore.

THOMAS LINCOLN sworn and examined.

By Mr. PIERREPONT:

Q. You are a son of the late President Lincoln?

A. Yes, sir.

Q. Were you with your father down at City Point in March, 1865?

A. Yes, sir.

Q. Where were you—in a house or on a steamboat?

A. On a steamboat.

Q. Were you with him during the time he was there?

A. Yes, sir.

Q. Do you remember anybody coming to the steamer and asking to speak to him.

A. Yes, sir.

Q. What did the man say?

A. He said he would like to see the President.

(Question objected to by Mr. Bradley. Objection overruled.)

Q. Did he tell you where he came from?

A. Yes; he said from Springfield.

Q. What further did he say?

A. He said he would like to see the President on particular business.

Q. State the mode of his saying it; whether he urged it.

A. Yes, sir; he wanted to see him "real bad."

Q. State whether he tried more than once to pass in where he was.

A. He tried twice, I believe.

Q. State whether they would allow him to see the President.

A. They would not.

Q. Do you see the man here who tried to see the President?

(Prisoner made to stand up.)

A. He looked very much like him.

Q. Like the prisoner.

A. Yes, sir.

Mr. Bradley desired an exception to be noted to the ruling of the court admitting the testimony of this witness.

The court here took a recess for half an hour.

AFTERNOON SESSION.

FRIDAY, *July* 5, 1867.

On reassembling after the recess, the district attorney said:

I desire to state to your honor that there are only two additional items of testimony that we propose to offer to the jury—one in reference to the state of the moon on the night of the assassination, and the other a cipher letter, the translation of which is published in Pitman's report of the trial before the military commission, page 42. Probably Mr. Bradley will admit it as it is there reported; if he does we will close the case; if not, we will have to ask the court to indulge us until Mr. Duell, by whom we propose to prove it, comes in. If the gentlemen think it is not evidence they can make that point before the court now in the absence of the witness just as well if he were here.

Mr. MERRICK. We do not feel ourselves authorized to admit anything with regard to such a transaction.

Mr. BRADLEY. We want to see Mr. Duell.

Mr. MERRICK. We want to have him here in order that we may talk to him.

The DISTRICT ATTORNEY. I believe it is agreed that the almanac may be handed in at any time before the defence offer their proof to show when the moon rose on the night in question, and what was its condition as to its being full or not.

Mr. MERRICK. I think the only satisfactory exposition of that matter would be the presence of a scientific man here, who arranges these matters for the government.

Mr. BRADLEY. Mr. William Q. Force, from the Smithsonian, might be summoned.

Mr. MERRICK. Or Professor Henry, of that Institution, who could not only furnish reliable information regarding the condition of the moon at that time, but also as regards the state of the weather.

Mr. PIERREPONT. I suppose any almanac published in 1865 is a proper thing to be put in evidence, provided we are able to agree upon some particular one. I understand it to be a principle of the common law that we may read any history or almanac, because the court will take judicial notice of the movements of the heavenly bodies, and the manner in which they are recorded by any person who thinks proper to write on the subject.

The COURT. I will read here, for the benefit of whom it may concern, part of the 5th section, chapter II, 1st volume of Greenleaf on evidence.

Speaking of matters which are recognized in courts of common law jurisdiction among all civilized nations, it is said: "Neither is it necessary to prove things which must have happened according to the ordinary course of nature, nor to prove the course then of the heavenly bodies, nor the ordinary public fasts and festivals, nor the coincidence of days of the week with the day of the month."

I presume that the movement of the moon is the movement of a heavenly body. That is all I know about it.

Mr. PIERREPONT. I now propose to read from this almanac the time of the rising of the moon, and the time when it was at its full on the night of the 14th of April, 1865.

Mr. BRADLEY objected to the reading. Objection overruled. Exception reserved.

Mr. MERRICK. I understood your honor to decide that it was not necessary to prove it.

The COURT. It is not.

Mr. MERRICK. Then it is not necessary to read it now.

Mr. PIERREPONT. I want to read it to the jury, in order that they may appreciate the evidence on the subject.

Mr. MERRICK. The court says it not necessary to prove it.

The COURT. It would be better for you to refer to it in your argument.

Mr. MERRICK. That is the way I understand it.

Mr. PIERREPONT. I supposed I would also have a right to read it to the jury before I came to the argument.

The COURT. No, sir.

Mr. PIERREPONT. Your honor, then, will take notice of the fact that the moon on the night of the 14th of April, 1865, rose in Washington at 9.59, and was then within two days of its full.

Mr. BRADLEY. I would ask your honor whether that is in evidence to the jury or not.

The COURT. I do not admit that book, but I will state that the court does not intend that this jury shall go from this box without knowing at what hour the moon rose.

Mr. BRADLEY. I simply want to understand where we are now.

The COURT. That book I do not admit in evidence, for I do not know that it is an almanac.

Mr. MERRICK. Nor do I understand your honor to say that it is competent for the gentleman to state now as a matter of fact and evidence to the jury that the moon rose at such a time.

Mr. BRADLEY. I understand your honor, then, to rule that there is no evidence offered on that subject. That what has been stated by the gentleman is not evidence, and therefore, if counsel comment upon it, they do not do so as evidence, but as a matter of which notice may be taken.

Mr. PIERREPONT. We will get the moon up somehow before the jury.

Mr. BRADLEY. Yes, sir; and we will get it down.

Mr. PIERREPONT. I now propose to call a witness with regard to this cipher letter.

FREDERICK H. HALL sworn and examined.

By Mr. PIERREPONT:

Q. Where were you employed during the war, or towards the latter part of it?

A. In the war office under either Mr. Stanton or Mr. Dana, assistant Secretary of War

Q. Have you had experience in deciphering ciphers?

A. I have.

Q. Will you be kind enough to look at the cipher letter before you, and then state whether you are able to decipher it, to state what the contents of the letter are, in English?

Mr. BRADLEY. I object.

The COURT. The witness can go on and state what his translation of the letter is, but the letter will not be allowed to be put in evidence before the jury until it is connected with the prisoner at the bar.

Mr. PIERREPONT. We propose to show by the man who found this letter that it was found in North Carolina. It shows on its face that it is in cipher. We want to show by the testimony of experts that this cipher is in the handwriting of one of these conspirators. These six conspirators form a corporate body, and their twelve hands, and their six heads, act together, and you cannot separate them.

Mr. BRADLEY. If the gentleman will say that he intends to prove this paper to be in the handwriting of any one of the conspirators, I withdraw all objection.

Mr. PIERREPONT. I do not say of the prisoner, but of one of the six conspirators.

Mr. BRADLEY. Precisely. With that assurance I withdraw the objection.

Examination resumed by Mr. PIERREPONT.

Q. Are you able to decipher the letter that has been handed you?

A. I am.

Q. Have you translated it?

A. I have.

Q. Will you read the translation?

Witness then read as follows:

"WASHINGTON, *April the* 15, 1865.

"DEAR JOHN: I am happy to inform you that Pet has done his work well. He is safe and Old Abe is in hell. Now, sir, all eyes are on you. You must bring Sherman. Grant is in the hands of Gray ere this. Red Shoes showed a lack of nerve in Seward's case. But he fell back in good order. Johnson must come. Old Crook has him in charge. Mind well that brother's oath and you will have no difficulty. All well. Be safe and enjoy the fruits of our labor. We had a large meeting last night. All were bent on carrying out the program to the letter. The rails are laid our safe exit. Old, always behind, lost the pass at City Point. Now I say again the lives of our brave officers and the life of the South depends upon the carrying this program into effect. No. two will give you this. Its ordered. No more letters shall be sent by mail; when you write sign no real name, and send by some of our friends who are coming home. We want you to write us how the news was received there. We receive great encouragement from all quarters. I hope there will be no getting weak in the knees. I was in Baltimore yesterday. Pet had not got there yet. Your folks are well and have heard from you. Don't lose your nerve.

"O'B. NO. FIVE.

Q. What is the date of that letter?

A. There is no terminal date. Only, "Washington, April 15, 1865." There is no punctuation to this, except in one or two cases. The sense supplies that.

Cross-examined by Mr. BRADLEY.

Q. There are no ciphers for four letters in there, I see, "Q," "Y," "X," "Z."

A. No, sir.

Q. Did you ever see that cipher letter before to-day?

A. Yes, sir; in April, 1865.

Q. Did you then make a translation of it?

A. I read it.

Q. Did you make a translation of it?

A. No, sir.

Q. Who did translate it?

A. I think Mr. Duell made the translation which was read at the conspiracy trials.

Q. Did you dictate it?

A. No, sir. The letter was shown to me by Major Burnett, who was one of the judge advocates, and I read it, but simply for my own instruction.

Q. Did Mr. Duell show you his translation?

A. No, sir.

Q. Who did show it to you?

A. Nobody.

Q. You never saw the translation?

A. Oh, yes, sir. I have seen it in the printed book.

Q. Have you read it to-day?

A. Yes, sir.

A. Will you please arrange the alphabet of this cipher letter on this slip of paper?

A. I will.

Witness did so as follows:

A 1	J ⁞	S s
B b	K ⁚	T t
C 8	L 7	U 5
D +	M	V
E 2	N ...	W co
F ⁞	O 4	X
G 9	P T	Y ō
H :.	Q	Z
I ⁝	R. r	

The court here took a recess until to-morrow (Saturday) morning, at 10 o'clock.

SATURDAY, *July* 6, 1867.

The court met at 10 o'clock a. m.

The DISTRICT ATTORNEY stated that he had used every exertion to procure the attendance of Mr. Duell as a witness, but that for some reason he was not in court. He proposed therefore now to close the case on the part of the prosecution, reserving the right, with the consent of counsel for the defence, to examine this witness upon a single point, if he should subsequently appear.

Mr. BRADLEY said he did not assent to that proposition.

Mr. PIERREPONT remarked that it was a matter within the discretion of the court.

The COURT said the regular order in presenting the case was for the prosecution to present their side and conclude, and then for the other side to present theirs.

The DISTRICT ATTORNEY said the chief justice of this court in certain cases had allowed persons to be called as witnesses for the prosecution after the other side had commenced its case. He believed it would be the exercise of a proper discretion on the part of the court to allow the same thing to be done in reference to this witness. He would not, however, make the application now, but reserving the right to make it hereafter if it should become necessary, he now closed the case on the part of the government.

Mr. BRADLEY desired the witness Susan Ann Jackson to be recalled for further cross-examination. He understood the district attorney distinctly to assent to the recall for further cross-examination of any witnesses who might be in the city, and the notes of the reporter, who was an officer of the court, would bear him out in that statement. The agreement, however, was specifically made as to Susan Ann Jackson, John Lee, and Rhoads, as to whom there was no difference of opinion, and who they now desired to have recalled for further cross-examination.

Mr. PIERREPONT said the discussion arose on the case of Lee, and that there was no such agreement as to him.

At the request of Mr. Merrick the reporter of the court read his short-hand notes of the discussion on the motion of the defence to recall certain witnesses on the morning of June 20th, for the purpose of showing that the district attorney on that occasion assented to the recall for further cross-examination of any witnesses in attendance, and remarked that the agreement, as the report showed, was general as to witnesses being in the city or in attendance upon court, and that the case of Susan Ann Jackson was a special application of the general consent given.

The COURT said that the offer so made by the district attorney was not accepted by the defence at the time.

Mr. MERRICK replied that the defence did not refuse to accept the general consent.

Mr. PIERREPONT denied that any general consent was given, or that any consent at all was given, except in the case of Susan Ann Jackson, and as the district attorney subsequently informed him, in the case of Rhoads. These witnesses would be recalled whenever the defence required. He stated to counsel, however, that whenever these witnesses were recalled he should further examine them in chief.

Mr. BRADLEY moved to strike out the testimony relating to Jacob Thompson. It would be recollected that the evidence was admitted only upon the condition that Jacob Thompson should be connected by *aliunde* proof with this case. The prosecution had closed its testimony without making any such connection, and he therefore moved to strike out the testimony.

Mr. PIERREPONT said what he had stated he could prove in relation to Thompson was in connection with the disbursement of money, and for that purpose he desired to show who Jacob Thompson was. He had proved that the prisoner took $100,000 of this money from Richmond, and had therefore made the connection which he had promised.

Mr. BRADLEY insisted that no such *prima facie* case as the rule required, connecting this party with the conspiracy, had been made.

The COURT ruled that the question should be held in reserve until the testimony had been presented on both sides.

Mr. BRADLEY said then he understood the testimony on this point to be received subject to their exception. He wished also to call attention to the statements of the witness McMillan, purporting to give certain revelations made to him by the prisoner about the killing of Union soldiers, the shooting of people while crossing the Potomac river, and the killing of the telegraph operator. He understood this testimony was to be ruled out unless connected by proof *aliunde* with the alleged conspiracy.

Mr. PIERREPONT said if he did not show it was connected with this case he did not desire the evidence.

Mr. BRADLEY said he understood the court to make the same ruling in relation to this evidence as in that in reference to Jacob Thompson.

The COURT assented.

Mr. BRADLEY then called attention to the North Carolina cipher letter, and said he understood it to be conceded that was not in the case.

Mr. PIERREPONT said it was so conceded unless further evidence was introduced in reference to it by the witness, to whom reference had been made.

The COURT said he understood the prosecution had closed their case with the understanding that it was without prejudice to their application to introduce another witness, if they could convince the court of the propriety of admitting such evidence after the defence had commenced its case. As regards the other evidence referred to, the question of what should be stricken out would be held for future consideration.

Mr. BRADLEY desired an exception to the above ruling to be noted.

Mr. MERRICK asked at what time in the progress of the case the question of striking out the testimony would be determined?

The COURT replied—any time before the jury get possession of the case.

Mr. JOSEPH H. BRADLEY, jr., then opened the case for the defence as follows:

May it please your honor, and gentlemen of the jury, we have at last arrived at that stage of this case when an opportunity is afforded the prisoner for saying something by way of defence, not only of his own character, his own reputation, his life, and his honor, but also, as it shall rise incidentally in the discus-

sion of this evidence before you, something in the way of vindicating the pure fame of his departed mother.

Perhaps no case has ever arisen in the annals of any country, presenting more extraordinary features than the one which you have under consideration. Perhaps no jury was ever called on to discharge a higher, a more difficult, a more sacred duty than is yours. Surely, gentlemen, our confidence in you is not misplaced in believing you will do justice, and entire justice, irrespective of rank, position, station, or of the parties interested in the issues of this case—and I may be permitted here to congratulate you that you are acceptable, not only to the defence, but you also have the indorsement of the learned gentlemen who represent the government. You will recollect that in the early stage of this case it took us one week to get a jury. We were willing to take any twelve honest men in this District; to lay our case before them and trust it in their hands—to take any twenty-six men, drawn in the ordinary way, and allow the gentlemen for the prosecution to strike off their number, we strike off ours, and empanel those who remained as the jury before whom we might present our case. All these propositions, however, failed. The learned gentlemen on the other side resisted every application of this sort, except one, which failed through no fault on our part. They would accept no proposition as a compromise, and they succeeded in satisfying the mind of his honor that it was his duty to reject the jury then summoned—men as honest as yourselves—on the ground that they were not summoned according to law, and we are therefore under the necessity of calling upon you to render your aid and wisdom in this matter.

I see before me represented not only the commonwealth itself, but men who represent the social interests of this District—its material wealth, its intelligence, and its honesty—men who in this case have a double duty to perform, not only to stand between the innocent and the accuser, but also to vindicate the reputation of this District, whose loyalty has been so much defamed. You are also a jury who cannot be reproached with having a taint of religious or other bias in this matter—for you represent opposite opinions upon the political questions of the day. When your verdict goes out to the world sanctioned by the indorsement of the government, rendered by a jury constituted as they would have it constituted—a jury satisfactory not only to ourselves, but to them—it is to be hoped that whether this verdict be for or against the prisoner, it will go far towards settling this question which has agitated this country to its very centre for two years past that the mysteries, doubts, and uncertainties which have covered the tragic event to be here considered may be dispelled, and the people may arrive at last at some intelligent opinion as to who the really guilty parties are.

We come to you, gentlemen, with a profound conviction of the entire innocence of the accused—a conviction which is not one of sympathy, or such as counsel ordinarily feel for the parties they represent, but one at which we have arrived after a sober, careful, pains-taking investigation, extending over a period of many weeks, and covering a space of country extending from the Canadas to Mexico, by personal conferences with witnesses who we know will be believed by this jury; by conferences with men of unimpeachable integrity—who have no interest in this matter except to render to you the truth, and nothing but the truth; men to whom the prisoner at the bar is a stranger, yet who, by reason of the marking hand of Providence, have been pointed out step by step as persons who could account for the absence of the prisoner, and his presence at another place when the bloody deed took place. Surely, gentlemen of the jury, we may be pardoned for having some fervor upon the subject with such convictions upon our minds—and assuming that you will arrive at the same conclusions, all we ask at your hands is, that you will give to the prisoner the full benefit of

what we shall adduce in his behalf. The maxim of the law is, that the prisoner is innocent of all offence until he is proven to be guilty, and the law casts that burden of proof of guilt upon the government. When a man is brought into this court of justice he is to be regarded by you as a man like yourselves, of pure character and reputation, with all the presumptions of innocence around him. He stands like any other citizen upon that constitution which secures to every man the right of a full, fair, and free trial before a jury of his countrymen. He appeals to you as a fellow citizen, not as a criminal, not as a felon, but to render to him justice as you would have justice rendered to you.

What has the learned assistant district attorney, who opened this case, done? He arraigns the prisoner at the bar in his opening speech, before a single item of evidence is offered to you, before one of their eighty odd witnesses has been put upon the stand; not only as a man upon whom a solemn charge of a crime committed against his government rests, but as one who is a felon of the deepest dye, for whom there is no adequate punishment this side of perdition; a man whom he will prove to be the party who was the mainspring and guider of that infamous crime He arraigns him before you and holds him up to public abhorrence at a time when, according to my conceptions of duty as a prosecuting officer, his mouth should have been sealed as to rhetorical flourishes. He holds him up to you as a spectacle to be gazed at, as a man whose heart is black beyond expression, a demon sprung from hell itself. He could not paint him to you in worse colors. He represents him to you with all this crime upon him, as a coward, who put other people's hands to do the dangerous work, while he secured his own ignominious safety by flight; as a man who was here on that occasion; who calls out the fatal time twice in succession in front of the theatre; who despatches his emissaries, desperadoes equal in wickedness to himself, but not having the same managing minds, to do his cruel work —that work upon the head of this government—which shrouded the whole nation in mourning. He represents him as taking his flight, and tells you, gentlemen, —and I hold him to account for it—that he will trace him from station to station and from place to place in his flight; that he will show you the man of whom he bought his disguise the very night he escaped; he would follow him from here to Canada, leaving on his route traces of his flight which could not be mistaken; he would prove the length of time he remained there; that he would follow him in his flight further, across the water to the old country, to England, to France, and to Italy, shuddering with fear, with the consciousness that the avenger of blood was upon his track; that he would follow him to the papal service, and show you how at last the friend of his youth, moved by the honorable consideration of a desire to have a felon of such a caste as he brought to justice, moved by those lofty considerations which would make a man sacrifice his own brother, was instrumental in bringing him in chains to this bar to be adjudged by you.

What is the condition of the case now? Has the learned gentleman kept his pledge? I propose to show you before I take my seat that his pledge is not kept, and let him settle with his own conscience the responsibility for the course he has chosen to take.

I do not propose in the discussion of this matter to enter into any debate or speech-making to you; I have a simple duty to discharge, and I shall endeavor to do it, I hope, fearlessly, and with such a degree of intelligence as will enable me to present the case to you for your consideration, preparatory to the introduction of the evidence of the defence. I have no further reproaches to cast upon the other side. If the evidence reproaches them, the fault is with them and not with me.

One thing I wish to say before we proceed. Heinous as this offence is,

its moral qualities in the sight of the Almighty are no worse than when the commonest vagabond in the street is slain in cold blood. I am as well aware as my learned friend, who is noting this proposition of the distinction drawn in Holy Writ between the head of a nation and a private individual, but in the sight of the Judge of the quick and dead the life of the humblest man is as precious and sacred to Him as the life of the loftiest citizen. I am aware, also, that this was a crime struck at the very heart's core of this people, and I need not recall to your minds, you citizens of the city of Washington, the thrill of horror which went through this community when, on the morning of Saturday, it was announced. You know as well as I do, that men's hearts stood still for fear, lest there should be such an outburst of grief, indignation, and rage throughout this land that men would be swept away from the bounds of reason. You know how people sprang to their feet to seek out the offenders who had thus outraged their sacred feelings. The great thing for which they prayed was vengeance. The minister of God in his pulpit invoked the judgments of heaven upon the assassins. Even tender women became changed in their dispositions, and longed to have the offenders brought to condign punishment. Nay, more; not only tender women but people who ought to have the attributes of tender women, shouted for revenge upon them and thousands of others. You know as well as I do how all these passions swept over this whole country. You know what exertions were made to secure the arrest of the offenders. You know that no step was left untried, no means unapplied, no money spared, to secure the arrest of the guilty parties; and the heart of every good American citizen could not, from its inmost depths, help approving it. Who among you would have failed to render to justice either of these parties? Does any man fear that a jury in the District of Columbia would fail to render back for punishment one who should be proven to have been guilty. We have no such fear, and we have no fear for the prisoner on that score, inasmuch as we, of all men now living, have had the best opportunities of testing his innocence.

There are in this as in every case, certain prominent features which it is important to keep in mind. There is a difference between us and the learned counsel on the other side in reference to the character of this indictment With these questions of law, however, I do not propose to perplex your minds at this stage, but simply to state to you that they contend there was a conspiracy to murder the president of the United States, and certain members of his cabinet; and our client, the prisoner at the bar, was one of the conspirators with John Wilkes Booth and others. On the other hand, we maintain that this is an indictment for murder simply, and his honor has at least allowed their theory to the extent of permitting them to introduce a great deal of evidence which we understand is applicable to their legal view of the indictment. I propose, therefore, to take the case upon their view and to treat it as a conspiracy to murder—the murder accomplished, and that this party being charged as one of the conspirators if proven to be guilty of conspiring, is as much guilty as the man who struck the fatal blow. For that purpose then we are obliged to inquire into the question of who the conspirators were. There is no doubt that John Wilkes Booth was one of them. There is no doubt that Lewis Payne was another. As to Atzerodt or Herold, there may be some doubt. As to Mrs. Surratt, we hope to satisfy you that a grave error has been made in her case. As to the prisoner at the bar, we take issue openly before you and declare him to be innocent of the offence.

Now, gentlemen, what are the circumstances upon which we rely to show this conclusion? The learned gentleman who leads the prosecution, who is its head and mind, if his colleagues will pardon me the expression, announced to you that he would trace back this conspiracy to 1863. So far as any evidence has gone he has not fulfilled his promise to you and the court, except you grope outside of this case for suppositions, beliefs, apprehensions, and suspicions that

some such thing existed before 1864. So far as my memory now serves me, the only witness who takes it further back, is one John Tippett, a mail carrier through Surrattsville, of whom we shall have something further to say. When did the conspiracy begin is a point to which we shall direct inquiry. We shall show who were the parties to it. When did Surratt's introduction take place? In January, 1865, according to the testimony of Weichman in Seventh street; so that, gentlemen, I maintain that for the purposes of this case you are not at liberty to go behind January, 1865, because Wilkes Booth, the head and front of this affair, the man who you must believe from their evidence was the person who planned the thing in whole, Wilkes Booth only made the acquaintance of the prisoner at the bar in January 1865. Under what circumstances? The prisoner even now only twenty-three years of age, left his college in 1863 or early in 1864, a youth just starting out into life, having no knowledge or experience of the world, leaving behind him a reputation such as any young man might envy, came to the city of Washington after the death of his father, and by that event was drawn into the position of husband for his mother and father for his sister. There were but three of them, for Isaac, the brother, was away in Mexico or Texas, and had been for years. He is the friend of his mother, the son of her counsel, her man of business. They moved to the city of Washington and took the house on H street, leaving what little property they had still in the State of Maryland, the rents to be collected and the farm to be looked after. He was the man who was to be her factotum. In all the relations of life no witness has ever impugned him, no witness has ever intimated to you that he was otherwise than a faithful son, that he was other than diligent in looking after his mother's business, that he was faithful at all times until suspicion is cast upon him by witnesses upon the stand that something went wrong with him after he made the acquaintance of John Wilkes Booth.

Who was John Wilkes Booth? One whose name and reputation will go down to the latest times in this country associated with the most atrocious assassination ever committed. Let us hope, gentlemen, at least, that at the bar of that offended God to which he has gone, there will be found some mitigation of his offence. Let us hope at least that his mind was unhinged from its reason, that he had become in the strictest sense such a fanatic as not to appreciate the enormity of the act which he contemplated and committed. He was a man of polished exterior, pleasing address, highly respectable in every regard; received into the best circles of society; his company was sought after, exceedingly bold, courteous, and considered generous to a fault, a warm and liberal hearted friend, a man who had obtained a reputation upon the stage second to none of his age in this or any other country. The prisoner, perhaps of all persons the most susceptible to the influences of such a person, and he of all men whom he could meet, the most likely to ingratiate himself with him—his very reputation, his distinction as an actor was enough to draw the heart of this young man toward him. We find him visiting at the house, we find them frequently together, complimentary tickets sent and accepted to go to the theatre, and these relations existing from time to time up to a month or five weeks before the tragedy occurred. There was nothing surely in this association calculated to bring any reproach upon the prisoner at the bar except from subsequent events, and for these subsequent events they they rely chiefly upon the testimony of Mr. Louis J. Weichman and Mr. John M. Lloyd.

Gent'emen, we propose to introduce countervailing testimony in reference to these two witnesses, and I will therefore direct your attention to some of the material points in which we will contradict them.

Mr. John M. Lloyd is an avowed drunkard, avowedly so intoxicated on the evening of the 14th of April as not to know whether he fell down at the feet of

Mrs. Surratt or stood up like a man, and conversed with her, as not to know whether he grovelled like a beast or retained the attributes of manhood. Mr. Lloyd tells you that on the 11th of April he met Mrs. Surratt on the road, on the Tuesday preceding the Friday of the murder, and had a conversation with her about property. She was then on her way down to his house on business connected with her property; that on the following Friday, April 14, after he had been to the court-house at Marlboro' and indulged himself in drinking to excess, he returned and found her at the house. I shall not rehearse the testimony—that is the business of the gentlemen who sum up—but merely refer to the fact that he testifies to a certain package left at that house by Mrs. Surratt for him, which package when subsequently opened, contained articles which he described to you. This witness has no recollection that Mrs. Offutt, a witness summoned by the government, but not put upon the stand, was in the house. He has no recollection of what transpired in the house. We will show to you that when Mrs. Surratt arrived there with Mr. Weichman she alighted from the carriage and was received in the house by Mrs. Offutt; that she told Mrs. Offutt the object of her visit to that place, and handed her at the same time a package, as anybody else would have handed casually a package to be delivered to Mr. Lloyd. Mrs. Offutt will tell you what transpired at that interview, in reference to this letter to which Mr. Weichman has testified She will tell you who else was in the room with these parties; she will tell you where Mrs. Surratt met Mr. Lloyd, and what Mr. Lloyd's condition was if it were necessary after his own statement upon the stand; she will tell you about how long she was there; she will tell you what transpired as the parties went through the front door of the house and drove away. You will be able to see through the whole of it, and that her testimony is entirely consistent with the theory of the innocence of Mrs. Surratt, and absolves her of complicity in this affair.

Bear in mind, gentlemen, that in the investigation of this case there is a principle running through it from beginning to end, by which you will test the evidence that is produced, and to which standard the prosecution must come before you can convict; that they must not only prove to your satisfaction beyond a reasonable doubt that the prisoner was guilty of the offence charged, but more than that, they must prove to your satisfaction that you cannot account for the evidence upon any other reasonable theory than that of guilt.

The next witness in this connection is Mr. Louis J. Weichman. But, before I pass to him I should state to you that Mrs. Surratt's circumstances at that time were very much straitened, a fact which will appear in evidence, and that her object in going to this place was to obtain money with which to provide for the necessary expenses of her family. We will show you, moreover, that although Mr. John M. Lloyd, the next morning after the affair, denied all knowledge of Booth and Herold, they had made their escape through Surrattsville. He conversed with them. We will prove that on that morning, when adjured by every consideration by a friend, who had known him for years, to tell the truth, he called on God to witness, he knew nothing of these men. What his inducement was, whether it was fear of his being suspected of complicity in the matter, is a consideration which is not a proper subject of inquiry at present.

I now proceed to consider the testimony of Weichman, a clerk in the War Department, a quondam student of divinity—a gentleman who stood almost in the relation of a son to this murdered woman, a man who lived in that house and enjoyed all the hospitalities and close relations which are permitted to a person upon such familiar terms with the inmates. Mr. Louis J. Weichman the principal witness for the government on that other trial, a man whose dastard heart, terrified by the position in which he found himself, led him to

sacrifice the innocent. What does he tell you upon this subject? "I was with Mrs. Surratt on the 11th of April, and we met Mr. Lloyd. Mrs. Surratt there whispered to Mr. Lloyd; they held a whispered conversation; she leaned forward out of the buggy and she and Mr. Lloyd whispered together." Mr. Lloyd has contradicted him on that subject himself. We will contradict him by two other witnesses, present at that interview, and who witnessed the suspicious circumstances attending—if there were any—connected with this event and immediately preceding the tragedy, and introduced for that purpose by the learned counsel. As you will recollect they asked for the manner in which this was done, of this and other witnesses, whether the conversation was in a natural tone of voice, or whether it was in a whisper between the parties. What next? He tells you that on the 14th of April he took her down to Surrattsville, he does not recollect seeing Mrs. Offut there, nor Mrs. Jenkins, nor anybody else but Mrs. Surratt and Mr. Lloyd. He did not even see the package delivered, but he tells you that before he left Washington, when about getting into the buggy, she handed him a package which she told him she was afraid would get wet, or must not be allowed to get wet. Remember, gentlemen, he is a stranger to all these circumstances, an innocent party. He tells you that sitting at the tea table the night of the assassination, he heard the steps of a man coming up the front steps; the door bell rang, that Mrs. Surratt went to the door. We will prove to you that is a distinct, positive falsehood; Mrs. Surratt did not leave the table, she did not answer that bell; she did not—as he states—go up and introduce the man into the parlor, where she had a conversation with him, but she remained seated at the table until they came up from tea when the man had gone. We will put upon the stand, if necessary, the person who answered that bell, and we will show to you the person who came to the door that night was not one of the conspirators, nor is he suspected of being such, but is a respectable citizen; he was not introduced into the parlor, and his errand was of the most friendly and proper character. Weichman's innuendo was that it was J. Wilkes Booth, or Herold, or Atzerodt, or Payne, and that Mrs. Surratt sat at the tea table with expectant ear, waiting for the man she had told him on the road she expected to see that night. That is the use they make of it.

We will prove to you, further, the exclamation with which he charges Mrs. Surratt, when the officers came to the house early in the morning, was not uttered; the conversation which took place in the parlor after the detective officers left that night, in the presence of three or four ladies, exists only in the fiction of the gentleman's tongue. The parties were there together, but no such conversation ever took place; no such statement was ever made to Mrs. Surratt by her daughter, and no such statement was ever made by her to her daughter that she believed John Wilkes Booth was an instrument in the hand of God for the punishment of Abraham Lincoln, or that God had sent this visitation upon this people for their pride and licentiousness. We will contradict him not by one witness only, but by several, upon that point. We will further prove that on the morning of the 15th, when they sat at breakfast, his statement that he announced his purpose to disclose what he knew of this affair, that he left the table for that purpose, and Anna Surratt remarked at that table that Abraham Lincoln was no more than a negro in the army, was utterly false. We will show you witnesses who were present at that breakfast table; we will bring the man who accompanied him out of the house and down to the headquarters of the police, and prove his whole account of the affair a wicked lie. I say wicked—all lies are wicked—but this one, which struck at the lives of his fellow creatures, the effect of which was to bring misery and ignominy, such as the world has rarely seen, upon the people sitting at that table, upon an innocent young woman, whose heart was wrapped up in her mother, was of all lies most wicked. We shall show you what circumstances transpired at the station-

house; we shall show you his pretended detail as a special detective in this search was nothing more than, and was intended to be nothing but, a card for his transportation in that pursuit; that he knew all the time although the irons were not riveted upon his hands, nor chains upon his feet, yet the hand of the law was upon him, and that he could not depart. We shall show that he never returned to Mrs. Surratt's afterwards, because he was not allowed to do so; that the officers of the law never lost sight of him; that he was never finally discharged till he had rendered his account to the military commission. We shall show to you, on his return home before breakfast on 15th April, in company with a certain gentleman, a most remarkable declaration was made to him by this man Weichman, and the terrible trepidation which he manifested at the time. We will show there was occasion for this trepidation and this declaration—a man who out of his own mouth, if in no other way, is shown to have been in the habit of visiting these parties, of being on familiar terms with Atzerodt, of lending him his hat, of lending him his coat, of being seen in the street with Booth several times, of obtaining from Booth on the very night preceding the assassination, or of going to him for the purpose of obtaining from him, the use of his horse and carriage. We will show to you whether he had occasion to feel himself bound up with these parties, not only on account of his living at that house, but because as a clerk in the War Department he obtained information which he furnished to persons who ran the blockade, in order to furnish that information to the South of the number of prisoners in the hands of the government.

Now, gentlemen, I know nothing of this matter, but there is to me a theory which appears consistent with the innocence of all parties to which, if I do not allude now, it is simply for reasons of prudence. But there is a theory to which your attention will be directed at the proper time, that will enable you to see that all these circumstances may exist, and yet at the same time entire freedom from any complicity in taking the life of the President, or of any other living being.

These are the principal witnesses as to the conspiracy, and I think you will agree with me upon that subject. The next step is the natural one of bringing Surratt here on the night of the assassination, and the day preceding, because the gentlemen are well acquainted with the rule of law that unless he was here aiding and abetting in that offence, in some way affording aid to these parties, or where he could furnish aid, if necessary, for the purpose of carrying out their common design, he cannot be convicted of this offence; and therefore they find it necessary to prove that which does not exist in reality: that John Surratt was here on the day and on the night of the 14th of April, for if he were in Europe at that time it will not be contended for a moment he could be guilty of this offence. If he were in Buffalo, not acting in concert with them, it could not be contended for a moment that he was guilty. He must be near enough, if occasion should arrive for his services, to be called in to carry out the scheme. Who do they produce to establish that fact? They produced, in the early part of the case, Sergeant Joseph M. Dye, an utter stranger to us, for the purpose of establishing perhaps the most material fact in the case. He was subjected to a long examination, and when dismissed, after his cross-examination, he disappears like one of those phantoms which he saw in his dreams. Sergeant Dye is the man who described to you the tall man, the genteelman, the villainous man whom he saw in front of the theatre that night. Now, admitting that Sergeant Dye was sitting upon the platform watching these men, and saw suspicious circumstances about them, admitting that he saw the three men there he describes, we will utterly destroy his testimony by producing to you the tall man; we will show you the genteel young man, and we will show to you further the villainous man. We will show to you, moreover, the man who looked into the back of that carriage. They tell us that the tall man was the prisoner at the bar; we will show you how much like

him he looks. We will show you Sergeant Dye did not sit upon that platform as he says he did. We will take a step further, gentlemen, and produce the man that called the time, "ten minutes past ten," in an audible tone of voice in front of the theatre. Will you have any difficulty with that witness? If you still have we can show you the record of his indictment for passing counterfeit money, for which he was arraigned, and for some purpose the case was procured to be continued. We will show you further, accompanying him to his native home if necessary, that men from his own native town would not believe him upon his oath. We will do more, we will follow him up H street that night and show to you by a person who was adjoining that house, sitting on the front step from half past nine till eleven o'clock, wide awake, not a soul passed Mrs. Surratt's house, and that no such conversation as he states took place with anybody at an open window in that house. Nay, more, we will show to you by the records of the Smithsonian Institute, or by a record of some equally reliable scientific character, the condition of the moon at that time was such it was utterly impossible for any man to have seen what he says he saw on H street at that hour. The person who was near by will say it was so dark that at a distance of forty feet he could not tell whether a man was white or black.

Who else do they produce? David C. Reed, a notorious gambler for twenty years. We will contradict him out of his own mouth with reference to his seeing Surratt on that day. We will produce to you the record of his indictment in this court for a penitentiary offence, which is yet to be answered to. We will prove to you by respectable citizens of the city of Washington, men whom you will believe as against him or any other man, he is unworthy of belief upon oath.

Who is the next man? Sergeant Robert M. Cooper, who was with this man Dye. I think it is necessary only in reference to this matter to state his testimony is so indistinct relating to Surratt, it is unnecessary for us to pursue this inquiry further than to say that in what he says relative to these men, about whom his suspicions were aroused, he will be contradicted; and he will be contradicted by a person who says that no such conversation as testified to took place in front of Mrs Surratt's house on H street, and the condition of the moon was such that it could not have taken place as described.

Who is the next man? John Lee. We will contradict John Lee out of his own mouth. We will prove that he stated to more than one person he never saw John Surratt or knew him—that when he was in hot pursuit of the conspirators down in the lower counties, he stated he did not know John H. Surratt; he did know Atzerodt and would recognize him if he met him. We will show that the very day before he took the stand in the witness box, he made a similar declaration in this city, and again, that he said he had already narrated all that he knew about this affair.

Let me observe here, gentlemen, that I mention the names of no witnesses in these connections, for obvious reasons, but the witnesses are in Washington, and they will prove this man John Lee is not entitled to any credit upon his oath.

Who next? William E. Cleaver, just fresh from jail, admitted to bail since you have been sworn in this case; committed there for murder by the most foul and cruel means that could be applied, and that, too, upon the person of a young and tender girl—such a crime, as manhood would blush to mention in such a presence as this. He has had his trial; we can show to you that he had his conviction, but after a motion for a new trial, which has been granted, he has been admitted to bail. He is, however, still to answer to the charge of manslaughter. He is the man who is so delicate about his honor that he did not like to tell you where he has been for some time past, but who finally turns out the friend and companion of the most infamous of all men, Sanford

Conover, alias Dunham. Manipulated by him in jail, brought into conference with certain dignitaries, taught his lesson, what he was to swear to, and then swears before you he saw John Surratt that day, and gives other very important testimony, if he is to be believed. William E. Cleaver, we will show to you, has stated that he never would be brought to trial again, that there was a strong arm stretched over him for his protection, and he states to another man, that in all human probability he never will be tried again. William E. Cleaver, we will prove to you by a host of witnesses, if necessary, taken from this community, has a reputation so bad that he is not to be believed upon his oath.

Who is next? A fit man to be successor to William E. Cleaver. Benjamin W. Vanderpool, a gentleman belonging to a distinguished family of New York, and a member of the New York bar. Heaven save the mark if he is a representative of the New York bar! He says he is as a voluntary witness to testify against Surratt, and recognizes him immediately. He has a free conference with the distinguished gentleman who leads this case upon the other side, is put upon the stand, and swears positively he saw John H. Surratt on the 14th of April at a certain concert saloon which you know with me must have been the Metropolitan Hall, on the south side of Pennsylvania avenue, between Eleventh and Twelfth streets, the only concert hall in that immediate neighborhood. There is none between Tenth and Eleventh. He swears he went in there on this 14th of April, and saw Booth sitting at a round table with four others—a woman dancing at the lower end of the hall; and next to Booth sat a man who was the prisoner at the bar. He identifies him distinctly and positively. We will prove Benjamin W. Vanderpool said in the city of Washington and elsewhere, he never knew Surratt or saw him that he knew of, and when he testified that he came here spontaneously, without a summons, induced only by those influences which excite the heart of a good citizen, in assisting to arraign and punish the guilty, he had in fact, received a telegram from this gentleman (pointing to the district attorney) calling him here, and he (the district attorney) did not contradict him on the stand. We shall show you that so far from being a partner of Chauncey Shaffer, a gentleman of the highest reputation, he was simply allowed, without being turned out, to occupy a desk in that gentleman's office, and was forthwith turned away after delivering this testimony, because that distinguished gentleman knew of this telegram We will prove to you, if they will allow us, that Chauncey Shaffer, with the honor becoming a gentleman of character, addressed duplicate letters to the officers, representing the government, and to the counsel for the prisoner, stating these facts, and yet they would not furnish that statement to this jury when called upon by us in open court. We could show to you Benjamin W. Vanderpool is utterly infamous, if we need no other proof than this. We will show to you—and pardon me if I repeat that expression so often, for it seems to be a necessity of the case—there was never a round table in Metropolitan Hall, and there was not any entertainment there on Friday afternoon, the 14th of April; that only on one or two occasions since the establishment has been in operation, have they had entertainments on Friday afternoons. This man tells you he was there on that day between the hours of one and three o'clock in the afternoon. Do you wonder, gentlemen, we have been at times betrayed into indignation, seemingly not justified, perhaps, in the eyes of those who are not acquainted with the facts that exist in our knowledge? I think we will need no apology upon that subject after the facts are presented to you.

Who was the next witness? One who under the existing state of things in this country has been rescued from a state of degradation and exalted to the highest position. But she is to be recalled and I will pass her for the present, simply calling attention to the name because she is in this list. You will have on difficulty with her testimony. We desired to recall her almost immediately

after she left the stand, and his honor would have allowed us to do so, but the government interposed an objection to having this and other witnesses recalled for the purpose of cross-examination, to lay the foundation for their contradiction—witnesses who were produced from that room (pointing to witness-room) examined and dismissed before we could get an opportunity to inspect their history at all. We desired a list of their names, but they would not furnish them to us; they were dismissed at once, on their leaving the stand—witnesses on whom they relied to establish their most important point in the case, a case in which a human life was at stake. What has followed within the last two or three days? It was plainly becoming apparent our character for sincerity in this matter was pledged for the destruction of the testimony of one or more of these people, and lest when they came to you upon the summing up it should appear that their testimony was demolished, they determined to fortify it. They therefore bring in still other witnesses upon the same subject at a late period of the trial.

First we have Charles H. M. Wood, a barber. There is a certain investigation proceeding which will make it apparent to you, not that Wood has sworn falsely, knowingly so, but he is clearly mistaken; for, from the nature of things, the same person could not have been in two different places at the same time. He is, therefore, wrong in saying that J. Wilkes Booth and his party, the prisoner being among them, shaved at his barber saloon at the time mentioned. I pass that matter now because it will be fully explained before you, merely remarking this witness says he never saw either of these parties before, except John Wilkes Booth; two years or more have elapsed since he shaved the men, to whom he testifies, that morning, one of whom he is quite sure was the prisoner at the bar; and, mark you, he says, "I gave him a clean shave."

The next is Charles Ramsdell, brought from Massachusetts to prove what? On the morning of the 15th, having been in town over night with a comrade, on going out of camp two miles out of town, he saw a horse. You recollect how he describes a man afterwards came up riding that same horse, who inquired if he could get through the pickets. He then recollects there was a courier coming from Washington, and the man, as soon as he saw the courier, rode off rapidly, and said he would try it any how. He talked with the man on horseback. The prisoner is requested to rise, not to show his face to the witness, but his back, and he says, "I think I have seen that back before on the back of that horse."

Frank M. Heaton is the next gentlemen, a clerk in the land office, and I doubt not a highly respectable man. He saw no face that night when he was down in front of the theatre, that attracted his attention. There was a crowd there waiting to see the President. Last Thursday week he came into the court-room, and thinks he sees a distinct resemblance between the prisoner at the bar and a face he saw before Ford's theatre that night. Who would you hang upon that testimony?

The next is Theodore Benjamin Rhodes, an itinerant clock-maker, &c., a jack-at-all-trades. Rhodes tells you that he visited the theater on the 14th April about mid-day. We will show you the front door of that theatre was always kept locked during the day, and nobody was allowed to go in. We will show you that from twelve o'clock till two they were occupied in rehearsal, and if this man had been in the theatre he would have been seen by all parties. We will show you—the government has shown to you—the stick which he describes as larger in the middle and bevelled down to the ends, which he says Surratt whittled down and stuck in that hole, was not the stick found in the box. The government has produced the bar. We will show, further, this witness was not in the box with the man who arranged it. We shall put the man himself upon the stand before you to testify. Nay, more, gentlemen, you will recollect out of his own mouth he is condemned, when he tells you he sat in

the front row of the dress-circle and locates the box in which the lamented President sat that fatal night, on the left-hand side of the stage when, in fact, it is the right-hand side. He did not learn his lesson well.

And there is another point. He tells you when he was standing there, looking at the stage, the person who was in this private box opened the door about six inches, closed it, and went out; he, thinking he would like to look in there, being of an inquiring mind, walked round and goes into this box, and then sees a person come in whom he supposes was the same person who went out. The man addresses some remark to him, and he declares it was the prisoner at the bar. Now, gentlemen, we prove to you by the diagram of the theatre this man could not have gone out of that box without he walked out precisely the same door through which Mr. Rhodes walked in; there was no back staircase from that box; there was but one door kept open, and that door leads into a little narrow passage not much wider than was sufficient to allow a person to walk; that the entrance to the box is from that passage, and the passage ends with a brick wall. How could he get out except through the door where this man would meet him? We will show you the only way of getting up into that box is by going down through the parquette, up behind the dress-circle through this little door, and then into the box. We want Rhodes to be recalled.

I think, gentlemen, I have done with all the men or women who testified to John Surratt being here that day. If he was not here, I appeal to the gentlemen on the other side to know if there is anything else in this case, any other testimony which can connect him with guilt in this transaction.

Here, gentlemen, comes in our part of the case. I have stated to you our conviction of this man's innocence. Pardon me if I briefly call your attention to the reason of that statement. John Surratt was in Canada in April, 1865. From that place he went to Europe, and after an absence of two years he is found in the papal service. The man, who is said to have received from the confederate government the sum of $100,000 is so driven by poverty as to take service as a common soldier, in the ranks of his Holiness the Pope. At that place he is discovered to be the man who is charged with complicity in this affair. He is followed to Egypt; he is brought in irons to this country and at the end of nearly two years, is lodged in the common jail of this county. He is there seen and talked with by his counsel in this case. He is allowed no other connection with the outside world except through his counsel and his sorrowing sister. To us, from time to time, he imparts his story as we are enabled to get it from his own lips; a tale, simple in itself, but which has been faithfully followed by us from that time to this. It is the chart by which his whole evidence has been discovered, directed, and shaped, and as one of those who have been interested in effecting these developments, let me say to you that never before has it been my fortune to find a simple story so corroborated by facts, over which he could have no control. Witnesses have been found who know transactions which he supposed it would be impossible to verify; men of position and standing in their own communities, whom you cannot doubt; who come for the simple purpose of establishing, from time to time, each one of the individual facts which he recollects.

We will take him, from some time in the month of March, 1865, down to the city of Richmond, we will bring him back from there to the city of Washington on the 3d of April, when witnesses have sworn he passed through this city. He arrived in this city on the night of the 3d and went to his mother's house, from there he went down to the Metropolitan hotel, or some other hotel, and went thence by cars to the north on the 4th of April. He went direct to Montreal, landed there and registered himself at St. Lawrence Hall, according to their proof, and conceded on both sides, on the 6th of April. He settled his

bill there on the 12th of April. That is also a conceded fact; from thence, he went on a certain mission. They tell us he went in response to a letter or telegram received from J. Wilkes Booth, and produce Dr. McMillan to prove it, summoning him to Washington.

We shall show that he did not go near Washington, that he was not within four hundred miles from Washington at any time after he came to Montreal on the 6th of April, until he was brought here in the Swatara.

We will show you, gentlemen, further, that instead of making these trips from Richmond to Washington, from Washington to Montreal, and back to Washington and Richmond, weaving his web, as would a spider, as my distinguished friend describes him, he never was in Richmond but twice; once on a visit to friends, and the second occasion, the one to which I have referred. Can you complain of our feeling indignant with such representations. We shall show you where he went, who sent him, and for what purpose he went; where he was on the 13th of April, on the night of the 13th, on the 14th of April, on the night of the 14th, on the 15th of April, on the 16th of April, and take him back to Montreal. I pledge myself to show to you that he was not at any time during this period within about 400 miles of the city of Washington. And he had, so far as we can ascertain, no communication with any of the parties who were charged with this offence. We shall show you that he went to a certain town where he registered his name in his usual way as John Harrison, as he did in Montreal, his first and middle name, leaving off the Surratt; that he remained there, discharging the commission with which he was entrusted over the 14th of April, and on the morning of the 15th first heard of this tragedy; that he left that place and went to an adjacent town, starting in the afternoon and arriving there at night, where he remained until Sunday afternoon. Now, gentlemen, I state to you he registered at that place, but I state also that the register of that hotel, where he originally put it, has most mysteriously disappeared and cannot be found, and even the proprietors and servants of that hotel are scattered in every direction. But we will bring to your view certain telling facts connected with his stay in that town which indelibly fix him at that point at that time, by witnesses, gentlemen of character, outside of the hotel. We will show when he left this point, he stopped at a place on one of the great arteries of travel in this country, through which thousands of persons continually pass, and in direct communication with Washington by telegraph. At that point, we find his name registered in the same characters in which it is at Montreal. We will follow him back to the city of Montreal, where he arrived on the 18th of April. Nay, gentlemen, you shall not be able to tell us that he might have been concerned in this affair, and then only gone to these places for the purpose of eluding suspicion. We will show you certain facts and circumstances which rendered it absolutely impossible for him either to have taken the cars here, or to have taken a carriage, crossed over to Baltimore and then taken the train. We will show you such interruption of railroad travel as utterly precluded the possibility of reaching these points. Both interruption by the elements and by the authorities to prevent the escape of any of the desperadoes.

After he arrives in Montreal, it is not material for the purposes of this case what became of him, but in justice to him let me say that he was kept concealed in that city; he was allowed no intelligence through the newspapers or otherwise, except that the trial here was progessing favorably in behalf of his mother; and was driven frantic with grief when at last, on the eve of the execution, he discovered that she had been convicted and was about to be executed; and was only prevented by *force* from returning to the city of Washington to surrender himself.

Flight, says the gentlemen, is evidence of guilt. Flight! Who would not have fled in such a time as that if he had known John Wilkes Booth and had

been with him at all! The first intimation he had of his being charged with complicity in this affair was in the city of Albany where he read it in a newspaper. He at once went to Canada from that point, not because he was a fugitive from justice, but you all know as I do, that justice dropped her scales when she entered that building at the other end of Four-and-a-half street. Such was the height of public excitement, such was the agitation in this country, such the grief and desire for vengeance, that no man stood safe who had a remote suspicion of any connection with these parties resting upon his skirts.

I have said to you, gentlemen, it was not necessary to follow him beyond Montreal. It may be for some purposes. We will be able to introduce upon this stand a credible witness who has seen and conversed freely with Dr. McMillan upon this subject, whose memory is not at fault, inasmuch as his recollection of the conversation was reduced to writing. We will show you he made statements to that witness, directly the reverse of what he made on this stand. We will show you that St. Marie, a man whom we dismissed, to their astonishment, without any cross-examination, is a person utterly devoid of character, and unworthy of belief. And having thus disposed of these gentlemen, we shall leave the matter, so far as the testimony is concerned, in your hands.

I would like, gentlemen, to say a word or two in reference to another point. An effort has been made in this case, I fear not very much to the honor of my country, to sacrifice justice and innocence. An effort has been made to cloud with suspicion the escape of Surratt, as they call it, to Canada, by testimony in regard to a certain handkerchief said to have been found at Burlington. We will be able to show you that handkerchief was not dropped by Surratt, but by another person, an emissary of the government in pursuit of Surratt, carrying this as one of the tokens by which he might recognize him; a person who knew him in youth; and the government *knew it was dropped in that way*. I do not charge these gentlemen with it. I speak of the government as a government; but certainly they ought to be able to satisfy your minds and their own consciences, as to whether they can escape the responsibility of that knowledge.

We might show you certain testimony in reference to that Lon letter, charging the government with the knowledge of it's being a forgery, but I am advised that it would not be evidence.

Permit me, in conclusion, to ask your attention to one other fact, perhaps the most pregnant fact of all, and one which will be the most satisfactory to your minds. Independent of the declarations of Booth made in his own diary, as well as the testimony of one of the other conspirators, Payne, relieving Mrs. Surratt of all complicity in this charge, we will produce to you testimony showing the contents of articles of agreement between these men and by whom it was signed; that Mrs. Surratt's name was not there; that John H. Surratt's name was not there. We will bring you this testimony directly from the mouth of the chief assassin, immediately before the commission of the crime, but not discovered until too late to rectify it. I repeat, we will show the contents of that paper, which had the genuine signatures of these parties attached, pledging themselves to the commission of the offence, and then, gentlemen, we may safely ask you whether you believe the prisoner to be guilty, or not guilty, of this crime.

The witnesses for the defence not being in court, a recess was taken until Monday morning next, at ten o'clock, a. m.

MONDAY, *July* 8, 1867.

The court met at ten o'clock, a. m.

THEODORE BENJAMIN RHODES, recalled by the government for further cross-examination.

By Mr. BRADLEY:

Q. When you were examined the other day, I do not think you explained your entrance into the theatre perfectly. Please explain to the jury how you entered.

A. I went into the theatre at the foot of the stairs by the door. I think there was an entrance near the ticket box. It is seldom I have been into the theatre. I was in several times while it was being built. At this time I went because I thought perhaps I might buy a ticket.

Q. No matter about that; state where you went.

A. I went in at the right-hand door. I went up a small stairway to a small door, which I pushed open, and went up a flight of stairs to the door entering where the audience is seated.

Q. Then you went into the main entrance, did you?

A. I do not know. There is more than one entrance. I went in at the right hand corner, near where they sell tickets.

Q. Did you see the box as you went in?

A. I do not know that I did. It is rather an impression on my mind that there was no one in it.

Q. Then you went up a flight of stairs?

A. Yes, sir.

Q. Did you go up more than one flight of stairs?

A. I could not tell for a certainty. I believe there is a little winding stairway; I am not certain about that. I believe it goes up a small flight of stairs, and then turns in the middle to go on to the second floor; I could not tell for a certainty.

Q. The door was open through which you entered the theatre from the outside?

A. The outside door was open. I am now speaking of another door up a flight of stairs, which was partially open.

Q. Then you went into the theatre to the place where you saw a man opening the door?

A. Yes, sir; I went partly down amongst the seats and looked towards the stage. Just then I heard a door open and shut, and heard some one in the box.

Q. When you heard that door did you go right into the box?

A. I went right into the box; yes, sir.

Q. You did not go into a little narrow passage?

A. I believe when I saw it first it was partly open. I was then down among the seats.

Q. When you got up there that door opened right into the box?

A. Yes, sir.

Q. When you went into it you saw a man going out of another door?

A. I heard him retreating back. I saw the door worked backwards and forwards; that was the reason why I went there. When I came up there I heard steps retreating out of the box, going further back. I do not know where they went.

Q. Can you give the jury any idea of the size of that box you went into?

A. I should think the front of it was about as wide as that window, (five or six feet,) but went a little catering like toward the stage.

Q. As you stood there, you could see right on the stage into the theatre?

A. Yes, sir; there was a curtain down: I do not know what you call it. You could see a portion of the stage, perhaps five or six feet, in front of the curtain.

Q. From where you stood, you could see plainly on to the stage?

A. Yes, sir.

Q. And you were there when the chair was brought up and fixed?

A. I was there when the chair was brought up.

JOHN T. FORD, residence, Baltimore city, sworn and examined.

By Mr. BRADLEY:

Q. State whether you were connected as proprietor with what is known as Ford's Theatre, in 1865?

A. I was.

Q. Was the building under your direction, or not?

A. It was under my direction and supervision.

Q. Be good enough to look at that diagram (diagram shown witness) and state whether it is a correct representation?

A. It is correct, as far as it assumes to represent the dress-circle and the boxes of that tier.

Q. Showing the stage where the curtain fell?

A. Yes, sir; the dotted line shows where the curtain fell.

Q. Be good enough to explain to the jury where, on that diagram, what was known as the President's box is situated. The theatre, as I understand, fronts on Tenth street?

A. Yes, sir.

Q. And therefore runs back in depth towards the east?

A. Yes, sir.

Q. The stage is in the rear part of the theatre?

A. Yes, sir; in the farther end of the theatre, fronting towards Tenth street.

Q. And the entrance to the theatre, of course, from Tenth street?

A. Yes, sir.

The witness here explained to the jury, from the diagram handed him, the various positions about the stage, dress-circle, and boxes. Witness was also handed another diagram showing, the sidewalk and curbstone in front of the theatre, the entrance and vestibule, the parquette, lower tier of boxes, the stage and scenery; which he also explained to the jury.

Q. I ask you whether during the day the front doors of the theatre are left open, so that any person could enter the theatre?

A. The front door is left open, of course, to give access to the ticket office for persons who desire to purchase reserved seats or to buy tickets. The doors leading from the vestibule into the theatre are always closed. That is done in every well regulated theatre; and it was kept closed during the day in this theatre.

Q. That was your rule, I understand?

A. Yes, sir; it was an inflexible rule.

Q. State the hours of the day for rehearsal?

A. The hour for rehearsal varied at different times to suit the convenience of the stars coming to the theatre, and seldom commenced before ten o'clock.

(This examination objected to by Mr. Pierrepont.)

Mr. BRADLEY.—In order to save time, I will not press it farther.

Q. Was the curtain of the theatre ever down during the daytime? State what was the rule or practice.

(Question objected to by Mr. Pierrepont—a general practice cannot be proven.)

The COURT said it would be proper to ask whether the curtain was down on that particular day.

Mr. BRADLEY said the witness was not in the city on that day; but he desired to prove from the proprietor of the theatre what was the general rule in that respect.

Objection sustained by the court.

Mr. BRADLEY desired an exception to the ruling to be entered.

Q. State, whether, if a person entered that theatre in the daytime, and passed

round into what was called the President's box, into the first door leading into the double box, he could see the stage.

(Question objected to by the district attorney, as calling for a matter of opinion. Objection subsequently withdrawn.)

A. He certainly could not.

Q. Into what room or passage did that door open?

A. It opened into a passage leading to the President's box.

Q. The President's box comprises two boxes with a portable partition dividing them?

A. It had been so constructed as to be easily changed into one box on state occasion, or when any large party wanted a large box.

Q. Then the door opened into a narrow passage?

A. It opened into a passage. In that passage on the side towards Pennsylvania avenue was a brick wall. On the other side was a door, first, which opened into box number seven, and another door farther on in the passage, opening into box number eight.

Q. Which door was used when the president was there and entered that box?

A. The door entering into the passage.

Q. From what was called the President's box, is there any exit except the door you entered, and which you have described?

A. None except in front of it, or to the stage.

Q. And a man, then, who came to that door, opening out into the theatre from that narrow passage, he must have seen any person who was there unless he jumped over on to the stage?

A. Yes, sir.

Q. State whether you were in the city on the 14th of April?

A. I was not.

Q. When did you reach here?

A. I reached here on Tuesday evening after the 14th of April.

Q. You were at that time, by permission of the authorities, at Richmond?

A. I was. I was there on Friday, Saturday, and Sunday. I left Richmond on Monday morning.

Q. You were visiting some relatives there?

A. Yes; my mother's brother.

Q. And you returned on Tuesday. Now state, whether, by permission of the authorities, you made an accurate examination of the condition of the box, doors, and the other premises, in reference to the assassination?

A. I did.

By Mr. PIERREPONT:

Q. What day was that?

A. It was during the trial at the Arsenal. I could not state positively the day. It was in the latter part of the month of May.

By Mr. BRADLEY:

Q. Now, sir, did you examine the condition of the door, and of the mark in the wall?

A. Yes, sir.

Q. State what you discovered about the doors, and the mark in the wall?

A. I found a hole in the wall. I might state that I went there in company with a Mr. Raybold, who was employed in the theatre as an upholsterer, and with Mr. Plant. I examined the mark in the wall to see whether it had been cut or merely bruised in. I found it was merely bruised or dug out. Here was a mark round it indicating that paper had been glued over the place on the wall. I found beside this mark in the door, a little hole cut with a gimlet in the panel, cut round the edge with a knife afterwards. I found the keeper of both locks loose, especially of the door leading into box eight at the end of the passage

By a JUROR:

Q. Was the hole bored into the door that led into the passage marked E on the diagram, or through the door from the passage into the box?

A. It was the box door, not the passage door.

By Mr. BRADLEY:

Q. Look at the stick, [the bar used on the night of the assasination to close the door, heretofore placed in evidence,] and state whether you have seen it; and if so, explain what you know about it?

A. I remember seeing this on the assassination trials, or the military trial.

Q. That is the stick exhibited there as the stick found in that place fastening the door.

A. Yes, sir.

Q. Now state whether there were any such sticks used in that box?

A. After my attention was called to this stick, I recognized its prior use at once before it was used for fastening the door. It is an upright of a music stand. If I may be permitted to state, on the 22d of February, the Treasury regiment—the regiment belonging to the Treasury Department—had a ball at the theatre; and near that box in the dress-circle, the band was stationed for cotillion music. We found, late in the afternoon, that some music stands were needed, and some were hastily made. I believe this to be a part of one of those music stands.

Q. Can you tell of what material that is?

A. It is pine.

Q. What kind of pine?

A. I believe, white pine.

Q. You are certain it is not oak or North Carolina pine?

A. I am not much of a judge of wood, but I would venture an opinion upon that.

Q. You see that a portion of this has been sawed off. Explain how it was used?

A. A block eight or ten inches square was fastened at one end for the base, and on the bevel part of it, another board was fastened to hold the music.

Q. How was it fastened?

A. Nailed at the bottom to the stand and on the top to the shelf.

Q. Did you know Mr. John Wilkes Booth?

A. Well.

Q. How long have you known him?

A I have known him from childhood up to the time of his death. I knew his father before him, and knew the family. He resided in the same city as myself.

Q. Can you describe his figure, as to size, and whether there was anything remarkable about him to attract attention?

A. He was a man above ordinary height, very graceful and good looking.

Q. As to his vigor, state whether he cultivated great vigor, and whether there was anything peculiar about his hand?

A. He was known to the profession as one of the best gymnasts in the country; he was a man who took a great deal of exercise. He visited frequently the gymnasium of Mr. Brady. He was a very excellent swordsman, and was remarkable on the stage for his extraordinary feats with the broadsword. His hands were quite large, large enough to attract attention and to provoke remark by himself and others, they were naturally large and were distended by exercise.

Q. You cannot state then that he had a small delicate hand, which looked as if it were not used to labor?

A. He certainly had not.

Q. Now describe the character of his face and features?

A. He had very glossy black hair; usually wore a moustache, which was the only beard he wore on his face. In his face he was generally known as being remarkably handsome. His complexion was rather dark.

Q. Was there anything particular about his manner of conversing?

A. He was an extremely fascinating man in his manner. He was a man very fond of conversation—talked a great deal—was a very interesting man in his conversation.

Q. Do you know whether he wore gloves at all? Did you ever see him wear gloves?

A. That I cannot answer. I cannot recollect seeing him with gloves, although he might have often worn gloves in my presence.

Q. Do you know Booth's hand-writing?

A. Very well.

Q. Look at that original telegram [telegram before placed in evidence, dated New York, March 13, 1865,] and say whether it is in the hand-writing of Booth or not?

A. I should say it was. I believe that to be his hand-writing.

Q. Look at that [telegram heretofore placed in evidence, dated New York, March 27, 1865, exhibit No. 6.]

A. That resembles his hand-writing, not so much, though, as the other. It may have been written by him. The signature is like his, although the word "Wilkes" does not seem to be perfect.

Q. Examine that [Exhibit 40, telegram to Weichman, dated March 23, 1865.]

A. That also looks like his writing.

Q. These you think are all his writing?

A. Yes, sir.

Q. Look at that [card with Booth's name on it and "Do not wish to disturb you; are you at home," heretofore placed in evidence.]

A. That is also in his hand-writing, in my opinion.

Q. How long have you been familiar with Booth's hand-writing?

A. He entered my employment some eight or nine years ago. I remember seeing him write then, and from that time to the time of his death. I received letters from him, and have seen him write in my office. In fact, I have been familiar with his handwriting from his boyhood to his death.

Q. Examine that paper (letter signed "Charles Selby," heretofore placed in evidence) and state whether you believe that to be in his handwriting. I do not mean his natural hand, but whether it is a disguised hand written by him.

A. I do not think it is.

Q. State the reason.

A. It strikes me as being unlike his handwriting in nearly every respect. The condition of his hand would interfere somewhat with his writing in a hand of a style of this sort. He had, as I stated before, a large, thick, clumsy hand.

Q. Are there any letters on that paper which you can select that bear any resemblance in character to his writing?

A. I cannot notice anything now. If this were shown to me without any reference to him, I should think he was the last one who could have written it, even if I had been told it was disguised.

(Examination of witness suspended for the present.)

SUSAN ANN JACKSON (colored) recalled by the government for further cross-examination.

By Mr. BRADLEY:

Q. Do you recollect the morning after the assassination, or the night when the President was assassinated, some gentlemen coming to Mrs. Surratt's house and searching it?

A. Yes, sir.
Q. Did you see them?
A. No, sir; I did not.
Q. Were there any colored persons in the house besides yourself?
A. No one, but a small girl and a small boy.
Q. You saw two gentlemen?
A. No, sir; I did not.
Q. Look at that gentleman with a red moustache, (pointing to detective McDevitt) and state whether you saw him there that night.
A. No, sir; upon my word I never saw him. These gentlemen came to my room, and I heard them walking through the house. When they came to my room I laid down and covered my head up.

By Mr. PIERREPONT:

Q. Were you in bed?
A. Yes, sir; I know they never spoke to me. All the words they said when they came into my room were, that it was a very particular case and they must be very particular about it.

By Mr. BRADLEY:

Q. Did any gentleman that night ask you where John Surratt was?
A. No, sir; no gentleman ever mentioned Mr. Surratt's name to me that night.
Q. Anybody ask you anything about him?
A. No, sir; they did not.
Q. And you did not get up?
A. No, sir; I did not get up. I was lying down in my room.
Q. All the time they were searching the house?
A. No, sir; I did not get up.
Q. You are sure you did not tell anybody that night that Mr. Surratt had not been there for two weeks?
A. No, sir; I give you my word that no one ever asked me such a question.
Q. And there was no other colored person in the house but a little colored girl and a little boy?
A. No, sir.
Q. Do you recollect ever telling anybody that Mr. Surratt had not been there for two weeks before this night?
A. No, sir? I did not.
Q. Do you know a colored woman by the name of Rachel?
A. Rachel who?
Question repeated.
A. No, sir; I do not think I know any one of the name of Rachel.
Q. Do you know a woman by the name of Eliza Hawkins?
WITNESS. Where does she live?
Mr BRADLEY. I cannot tell you.
A. No, sir; I do not have any acquaintance with anybody, except next door, at Mr. Sweeney's.
Q. Do you know a woman by the name of Eliza Seavers?
A. I do not.
Q. You never told any gentleman that night, or you never said to any colored woman, Rachael or Eliza, that Mr. Surratt had not been at the house for two weeks?
A. No, sir; I did not.
Q. Have you ever said you were going to get anything for the testimony you gave in this case, or for being a witness?
A. Me, sir. No, sir; I did not. I never expect to get anything.

Q. You never, at any time, either at that time or afterwards, told Rachel or Eliza, that Mr. Surratt had not been in that house for two weeks?

A. No, sir.

Examination of JOHN T. FORD, resumed:

Mr. BRADLEY desired the ruling of the court as to whether he would be allowed to examine witnesses on such points as he had then reached, in following the line of examination laid out by the prosecution, recalling witnesses subsequently at other points, or whether he would be compelled to follow the exhaust rule.

The COURT replied that he might take his own course in the examination of his witnesses.

By Mr. MERRICK:

Q. I want you to explain to the jury the relative position of the entrance of the door to the ticket office and the wooden platform in front of the theatre erected for the purpose of facilitating persons coming there in carriages to get to the theatre.

A. [Explaining from the diagram.] This is entirely correct here. The platform is constructed about eight feet in width, one end resting upon the curbstone, and the other extending into the street. Letter A refers to the passage at the side of the theatre.

Q. Where does that passage lead to?

A. To the stage, for the convenience of actors and professional men.

Q. That comes outside to the rear of the theatre?

A. It goes to the rear of the audience room, and from there to the rear of the stage.

Q. Who made these plats?

A. Mr. Gifford, the man who built the theatre.

Q. You are familiar with all the positions and localities?

A. I think so.

Q. And do you tell the jury that they are correct, faithful representations of the localities marked upon them?

A. I have examined them carefully before to-day, and I find no mistake in them. As far as I know, they are correct.

(The diagrams referred to placed in evidence.)

Q. Point the jury to the entrance door of the theatre?

A. The entrance is marked here by the letter C. The ticket office is at the right hand as you enter.

Q. Now tell the jury where this clock, of which we have heard, is?

A. The clock is perhaps seven or eight feet high, on the wall in the rear of the passage as you enter. There are three doors from the vestibule leading into the theatre, to allow persons to come out more rapidly than they go in.

Q. In order to see that clock during the performance in the theatre, what door would you enter?

A. In order to make myself better understood I should state that there is a temporary door covered with oil cloth or with canvas, placed at the entrance from the lobby in order to preserve the warmth of the lobby. It was used on all occasions except when the theatre was closed, when the large doors were shut. The large door is always open during the time of performance. After we commence selling tickets, until the audience leave the theatre, these doors are open against the walls of the theatre. Then there is an inner door, the temporary one which I have described, such as are frequently used in public places, churches, &c.

Q. And this is the door through which you would go during the performance in order to see the clock?

A. Yes. You would go through the opening marked C—through the temporary door.

Q. Now, on which side is Pennsylvania avenue?

A. On this side, (explaining from diagram.)

Q. And the theatre fronting west? Now tell the jury whether or not that wooden platform of which you have spoken is above this entrance or below it?

A. It stood between the entrance door and the upper door, and occupied, I suppose, one-third the width of the theatre.

Q. Then the entrance door is in the centre of the building?

A. It is not. It is nearer Pennsylvania avenue.

Q. How near the entrance door would the southern edge of that platform be on a straight line?

A. Presuming I was standing in the door, and this representing the upper wall, the platform would commence about where Mr. Bradley sits, extending up in the direction of F street. (Witness explained by reference to various localities in the room.)

Q. Suppose you were sitting on the southern side of the platform, and a man was standing in the entrance door, turning one-third of his person to the right, would he or not have his back directly towards the man so sitting on the south side of the platform?

A. He would.

By a JUROR:

Q. Could you see the clock without going inside the door?

A. Not unless the door covered with canvas, I have referred to, was entirely away. Then you could see it by standing directly up to the door.

By Mr. MERRICK:

Q. But if that door was not entirely away then you could not see the clock without going in?

A. You could not unless you went into the vestibule.

Q. Was that door there when you had charge of this theatre?

A. It was intended always to be there.

Cross-examined by Mr. PIERREPONT:

Q. When did you leave Washington in April?

A. My impression is I left it on Monday or Tuesday, before the assassination.

Q. Where did you go?

A. First to Baltimore, afterwards to Fortress Monroe, and then to Richmond.

Q. When did you get back to Washington?

A. The Tuesday following the assassination.

Q. You were gone about a week?

A. About a week.

Q. And during that whole week you did not see Ford's theatre at any time?

A. No, sir.

Q. And you do not know what door was open and what was shut during that time, do you?

A. I am not aware that I do.

Q. Now this desk (pointing to the clerk's desk) faces the same way as the theatre did. Here is the vestibule—there is the entrance door behind the judge. Now point where the clock was?

A. Over Judge Wylie.

Q. When you got into the vestibule, if the door was open, you could see the clock?

A. When you were in the vestibule you could.

Q. There was no trouble about it?

A. No trouble about it.

Q. Will you look at this bar, (bar heretofore placed in evidence.) Do you know anything of that piece tied to it?

A. I can only tell through what I have heard.

Q. Do you know anything more about the bar than you do about that end of it?

A. I can recognize the bar better than I can the piece; but I can recognize the piece as having been probably sawn from the bar.

Q. You think it was, do you?

A. I have no doubt about it.

Q. You believe that piece, when the bar was against the door on the night of the murder, was on here?

A. Yes, sir.

Q. Look at this book, (diary of Booth, heretofore placed in evidence) and state in whose hand-writing you think it is?

A. The first line I would recognize as Booth's immediately.

Q. What would you say of the second?

A. It looks likes his hand-writing. I should say it was.

(Page of the diary referred to exhibited to the jury.)

Q. Now look at that page; do you think it is Booth's hand-writing?

A. Yes, sir.

Q. Now tell the jury whether you think Booth, with his big clumsy hands, could have written that in your opinion?

A. I recognize the characteristics of his hand-writing there.

Q. Do you recognize that as a clumsy hand?

A. It shows awkwardness in the formation of the letters.

Q. Do you think it is an awkward, clumsy hand?

A. It is not a perfect hand-writing.

Q. Do you think it is a clumsy hand?

A. To some extent.

Q. Do you think it is less clumsy than the Charles Selby letter?

A. I think that is a better hand-writing.

Q. Do you think that the Charles Selby letter is a less clumsy hand-writing than the diary?

A. I do not know that it is.

Q. Do you say that the Charles Selby letter is written in a natural hand?

A. I am not an expert on that subject, but to the best of my opinion it is very unlike anything I have ever seen Booth write.

Q. And it was so intended, I presume. You have given a description of Booth as a very handsome man. He was a man of a very fine appearance was he not?

A. To some extent.

Q. Very careful in his dress?

A. Very fastidious.

Q. He was a dandy in his dress was he not?

A. Not to that full extent. He was very careful in his dress.

Q. Was he not extreme in the care of his dress and person?

A. He was not foppish.

Q. I do not ask you whether he was foppish. Was he not extreme in the care of his person and dress?

A. I did not think him extreme. He dressed in good taste.

Q. He dressed in careful taste, did he not?

A. He did.

Q. And was careful in his dress and was clean in his person, was he not?

A. He was.

Q. Was he careful as to the kind of boot he wore, in order to show a nice, neat foot?

A. His foot was large.
Q. Was it a nice, neat foot?
A. I do not think it was.
Q. Did he wear a nice boot?
A. He did.
Q. A careful boot?
A. He appeared to be very careful.
Q. Was not his tailor an *artiste* in the manufacture of his dress?
A. He appeared to be carefully appareled.
Q. And what do you say as to his other appearance? Do you think he neglected his hands?
A. No, sir.
Q. Do you think his hands were hard, black, and rough like those of a laborer?
A. No, sir.
Q. Do you think they were white and soft like those of a gentleman?
A. No, sir; I should think they were between the two.
Q. Do you think they were brown?
A. His hands were apparently half as large again as mine.
Q. I am now talking about the color. Were they clean, white, and carefully preserved, or were they black, rough, and coarse like those of a laborer?
A. He kept his hands clean, I believe.
Q. As carefully as he did his person?
A. He kept his hands clean.

HENRY CLAY FORD, residence, Baltimore, sworn and examined:

By Mr. BRADLEY:

Q. In April, 1865, in what business were you engaged?
A. I was in Washington city, the treasurer of Ford's theatre, on Tenth street.
Q. In the absence of your brother, who had the superintendence or management of the theatre?
A. Myself and my brother, John R. Ford.
Q. Did you know John Wilkes Booth?
A. Yes, sir; very well.
Q. Do you recollect seeing him on Friday, the day of the murder of the President?
A. Yes, sir.
Q. Do you recollect what time of the day you saw him?
A. I saw him about half-past eleven o'clock, in front of the theatre. He came down Tenth street from towards F street, towards the theatre.
Q. Did he do anything after he came there? If so, what?
A. I told him there was a letter in the office for him. I believe he went in and brought the letter out, sat down on the steps, and commenced reading it.
Q. Did you learn before, or at that time, or about that time, that the President was coming that night?
A. My brother told me he was to be there that night a little before I saw him, about eleven o'clock.
Q. Do you remember, after Booth was there, that anything was said on that subject in his presence?
A. I do not remember of any one telling him. I suppose he heard it while he was there.
Q. State what orders were given by yourself, or any one else, for preparing the box for the President.
[Question objected to by Mr. PIERREPONT as immaterial. Objection overruled.]
A. Orders were given about two o'clock to prepare the box.

Q. Who was present, charged with the execution of that order?
A. Thomas J. Raybold.
Q. What is his position at the theatre?
A. He was doorkeeper, and attended to the upholstering about the theatre, the most of it.
Q. Who gave the order to prepare the box?
A. I gave the order.
Q. Did Mr. Raybold execute the order? and if not, who did?
A. He was sick.
[This evidence objected to by Mr. PIERREPONT as incompetent.]
Mr. BRADLEY said he only desired to show who prepared the box.
Q. Did Mr. Raybold prepare it?
A. No, sir; he did not.
Q. Who did it?
A. I did it.
Q. At what time did you go to work preparing that box?
A. Some time between two and three o'clock.
Q. Were you up in the box?
A. Yes, sir.
Q. State to the jury whether the curtain of the theatre was up or down at that time.
A. It was up.
Q. Can you state whether it had been up all day or not?
A. All day, sir.
Q. While you were at work preparing the box for the reception of the President, was any stranger there?
A. I did not see any.
Q. Did you have any conversation with any one who was there?
A. No, sir.
Q. You knew Edward Spangler?
A. Yes, sir.
Q. Do you know where he was at that time?
A. He was on the stage, fixing the scenery.
Q. Do you remember anything about a chair being brought in for the occupation of the President?
A. Yes, sir; I ordered a colored man to bring a chair down from my room.
Q. Were you in the box at that time?
A. Yes, sir.
Q. Did you have any conversation with any stranger at that time?
A. There was one gentleman there—I do not know his name—from the Treasury Department, helping me to fix up the box. He brought a flag there.
Q. Any one else?
A. No one else.
Q. Do you know anything about the condition of the keepers of the locks of boxes Nos. 7 and 8?
(The Court inquired what was meant by the word "keepers."
Mr. Bradley replied, "Hasps.")
Q. You do not know whether they were fast or loose to either of these boxes?
A. No, sir.
Q. Where were you on the night of the performance—Friday night?
A. In the box office.
Q. Where were you during the third act?
A. Still there.
Q. Were you out in front at that time?
A. I may have been; I have no recollection of it.

Q. Have you any recollection of the rehearsal that day, as to what time it occurred?

A. There was a rehearsal.

Q. Was it before or after the box was fitted up?

A. The rehearsal was before the box was fitted up; not afterwards.

Q. The box, you say, was fitted up between two and three o'clock. Do you recollect at what time the rehearsal commenced?

A. I am not positive. The rehearsal was generally called at eleven o'clock

Q. You do not know of any difference that day?

A. No, sir.

Q. I ask you if it was possible for any man, entering at that time the door marked D on this plat, to see the stage?

A. No, sir; not unless one of the other doors was open.

Q. If only the end door was open could you see the stage?

A. No, sir; unless you came round and looked into the box.

Q. Who assisted you in fitting up that box, besides the gentleman from the Treasury?

A. Mr. Buckingham, doorkeeper there.

Q. Was there any means of getting out of these two boxes into the body of the theatre except by jumping over the front of the box and through this door marked D?

A. No, sir; no other means.

Q. Was there any door at all in the back wall of that box?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. How many doors were there in entering into this box where the President was?

A. Three entrances.

Q. Three doors?

A. Yes, sir.

Q. At the time you went there the doors were all there, were they not?

A. Yes, sir.

Q. You could go into any one and out at another?

A. Yes, sir.

Q. But you would have to go into the first door, marked D, before you could get to the others, and when you got through this door you could get into the others, or into one and out at another?

A. Yes, sir.

Q. And you could likewise go where Booth went, over on to the stage?

A. Yes, sir.

Q. Now tell us where you took breakfast that day?

A. At the National Hotel.

Q. What did you do next, after breakfast?

A. I walked right up to the theatre.

Q. At what time?

A. About 11 o'clock.

Q. Where did you go?

A. Right into the box office.

Q. Did you stay there?

A. Yes, sir.

Q. How long?

A. All the afternoon—not in the box office all the time, but in the theatre.

Q. I am now speaking of the box-office. How long did you stay in the ticket office?

A. About an hour.

Q. That would bring you to about 12 o'clock. After 12 o'clock where did you go?

A. I went back to the stage.

Q. How long did you stay on the stage?

A. I suppose about half an hour, or an hour.

Q. Which do you think?

A. I cannot very positively say.

Q. That brought you up to one o'clock; what did you do then?

A. I was in the box-office again.

Q. How long did you stay in the box-office?

A. I suppose an hour.

Q. That brought you to two o'clock; and what went on up in the theatre while you were in the box-office you do not know?

A. They were taking the partition out of this box.

Q. My question is whether you know while you were absent in the box-office what went on in the theatre?

A. No, sir; I am not certain.

Q. Did you say the partition was taken out while you were in the box-office?

A. Yes, sir.

Q. You do not know anything about this partition being taken out, except that it was out when you got there?

A. No, sir.

Q. When you went up there after two o'clock, was that the first time you were there?

A. Yes, sir.

Q. Do you know, then, that nobody had been there?

A. No, sir.

Q. Did you examine the wall?

A. No, sir.

Q. Did you examine the door?

A. No, sir.

Q. Did you see any shavings or plastering on the carpet?

A. No, sir.

Q. Did you look for any such things?

A. No, sir.

Q. Did you know anything about these preparations?

A. No, sir.

Q. When did you first learn the President was to come there?

A. About 11 o'clock in the morning.

Q. Who told you?

A. My brother.

Q. That was the first you heard of it?

A. Yes, sir.

Q. You never got to the box until two o'clock?

A. No, sir.

Q. When you went there you found the partition taken out?

A. Yes, sir.

Q. Was there any difficulty in seeing the stage when you got into this box, B?

A. No, sir.

Q. Do you say the curtain was up all day?

A. Yes, sir.

Q. Now tell how you know, when you were in the box, that it was up?

A. I do not remember of its being hoisted.

Q. But you say you were in the box—might it not have been hoisted twenty times and you not know it?

A. It might have been.

Q. Might it not have been let down twenty times and you not know it?
A. Yes, sir.

By Mr. BRADLEY:

Q. You say you were on the stage an hour or more?
A. Yes, sir.
Q. And you were in that box preparing the box. During that time that curtain was up?
A. Yes, sir, it was.
Q. Does hoisting that curtain usually make considerable noise?
A. I do not remember whether it went up easy or whether it made a noise.
Q. It was up at any rate when you were there. Who took down the partition?
A. Spangler.
Q. Do you know who assisted him?
A. A man by the name of Jacob Ritterspaw.
Q. About the doors. After you got into the building, the entrance doors into the theatre, were they open or locked?
A. The door is generally locked. It may have been open to pass through to fix the box. It was usually locked, and I kept the key in the office.

JAMES J. GIFFORD recalled as a witness for the defence, and examined by Mr. Bradley:

Q. I think you stated in your former examination that your place on the stage was stage carpenter. Do you remember being at the theatre during the night of the assassination of the President?
A. Yes, sir.
Q. Do you know the box he occupied?
A. Yes, sir.
Q. You built the theatre?
A. Yes, sir.
Q. State if you made these diagrams, [diagrams of the theatre heretofore placed in evidence,] or had them made.
A. Yes, sir.

(Mr. PIERREPONT said as the diagrams were in evidence and not questioned by the prosecution, he hardly saw the necessity of introducing evidence to prove their correctness.)

Q. State if they are an accurate representation of what they purport to represent.
A. They are correct, according to the memorandums I had of it.
Q. State whether there is any outlet to boxes 7 and 8 into the body of the theatre, except in front and to the stage, except through the door marked E.
A. There is no other exit or entrance at all.
Q. Were you engaged about the theatre that day?
A. Yes, sir.
Q. Did you assist in the preparations for the reception of the President?
A. No, sir; I did not assist in the preparation of the box. I was attending to my duties on the stage.
Q. State, if you please, whether the curtain was down or up during that day.
A. The curtain was generally lowered about half past five or six o'clock—after the work on the stage was done.
Q. How before that time?
A. It was not down before that time.
Q. How much light is there into these boxes when the theatre is closed in the day time?
A. Very little, if any, unless the doors at the entrances of the boxes are open.

You cannot see into the passage at all. It is perfectly dark in the passage leading to the boxes.

Q. State where the hole was in the wall.

A. It was back of the door in the passage.

Q. State whether it was quite dark there unless the doors were open.

A. Yes, sir.

Q. Did you make any examination there on the morning after the assassination? and if so state whether you found any marks of the plastering which had fallen from that wall.

A. I did not know there was any hole cut in the wall until two or three days afterwards. I did not know until Sunday.

Q. Did you make any examination then?

A. I did.

Q. Did you find anything either on the floor or carpet?

A. Nothing at all. I found the hole on Saturday in the door, and I thought the President was shot through it.

Q. That was merely the gimlet-hole which you described when you were on the stand before?

A. Yes, sir.

Q. On the night of the assassination, and during the performance, state if you were out on the front pavement, in front of the theatre, at any time.

A. Yes, sir; I was out both during the first and second acts.

Q. Were you out there at the commencement of the third act?

A. Yes, sir.

Q. Who was with you?

A. Lewis Carland.

Q. Who is Lewis Carland?

A. He is a costumer and actor, engaged on the stage.

Q. Did you see Booth about there?

A. No, sir.

Q. How long did you remain there?

A. At the beginning of the third act, about twenty or twenty-five minutes.

Q. Which way did you go from the stage to the front?

A. I went through the stage entrance on the side next E street.

Q. The stage entrance is on the south side of the theatre?

A. Yes, sir.

Q. Did you see Booth then?

A. No, sir; I did not see him that night at all.

Q. When you came out on the front, while there with Carland, state where your position was, as well as you recollect.

A. It was between the stage entrance and between the second door in the building, which was used by the audience coming in and out to buy tickets. [Position explained to the jury by diagram, witness remarking there was an opening of six feet (one or two) not put down.]

By Mr. PIERREPONT:

Q. The diagram is right, then, with the exception of that?

A. Yes, sir; that is the inside door.

By Mr. BRADLEY:

Q. And that is the door Mr. Ford described as being a temporary one?

A. Yes, sir.

Q. Did you know Mr. J. Wilkes Booth?

A. Yes, sir; I knew him from his boyhood.

Q. Did you ever see the prisoner at the bar before you saw him here?

A. No, sir, I never saw him.

Q. That night when you and Mr. Carland were out in front of the theatre, did you see him, or anybody resembling him, come down in front of that place?

A. No, sir.

Q Did you see any one come there and ask what time it was?

A. Yes, sir.

Q. State who it was.

A. The gentleman's name was Hess.

Q. Was he connected with the theatre?

A. He was connected with the theatre.

Q. Was he on that night, or not?

A. He had not been in the first piece. He was to go on in the second and sing a national song.

Q. What direction did he come from when he came down the street?

A. From towards F street.

Q. What occurred?

A. He came and asked what time it was. Mr. Carland stepped in the door, came out and said it was ten minutes past ten.

Q. Was Booth anywhere about then?

A. Not that I saw; I did not see him.

Q. Did you see anybody sitting on the carriage platform in front of the theatre that night?

A. I did not.

Q. You may state whether persons were allowed by the rules of the theatre to sit there; and if so, what would have been your duty in that respect.

A. We allowed no persons to sit there at all, nor to loaf about the front of the theatre. It would have been my duty to see that they were put away if they had been there.

Q. Were there policemen there for that purpose?

A. One policeman from the city police was detailed there in front of the theatre.

Q. What became of Hess after he asked what time it was?

A. He stood there awhile and then went in at the stage entrance, leaving Mr. Carland and I standing there.

Q. Did anything further occur before you learned of the death of the President?

A. Nothing that I know of.

Q. Can you state with distinctness whether there were two other persons standing in the same place where you two were for some time, before you heard this calling of the time?

A. There may have been; I did not take notice.

Q. If Booth had been close there you would have seen him?

A. If Booth had been there I should have seen him. A stranger I might not have taken any notice of.

Q. What signal was given on the stage at the theatre for shifting the scenes?

A. A whistle.

(A whistle was produced and blown by Mr. Bradley.)

Q. Anything like that?

A. Yes, sir; that is not a very good one. That was the signal for a change of scenes. Some theatres use gongs.

(Another whistle was produced and blown by Mr. Merrick.)

Q. Was it like that?

A. Sometimes he would blow as loud as that.

By Mr. MERRICK:

Q. As you were the architect of the theatre, I will ask you to explain the position of that platform in front of the theatre.

A. It was placed on the curbstone at one end. The other end reached out into the street. It was twenty or twenty-four feet long, and placed exactly in the centre of the theatre.

Q. Take this diagram and show to the jury the relative position of the extreme southern side of the platform and the entrance door, on the inside of which was the clock?

A. The clock hung over this door, (illustrating the diagram.) Here is the extreme southern end of the platform. It did not reach quite as far as the door.

Q. The entrance door, then, is between the end of the platform and Pennsylvania avenue?

A. Yes, sir; it did not reach quite to the door.

By a JUROR:

Q. How wide is the space between the outer wall of the theatre and the wall on which the clock was?

A. The width of the vestibule, which was about seven feet; and the wall was three feet thick. The pavement between the platform and the wall was about sixteen feet.

By Mr. MERRICK:

Q. Give the general dimensions, all round, of that vestibule?

A. I suppose the length of the vestibule was in the neighborhood of thirty or thirty-two feet.

Q. Do you mean going in from the street?

A. O, no, sir; I refer to the length. It was about seven feet wide as you entered—in the centre, I suppose, about ten.

Cross-examined by Mr. PIERREPONT:

Q. What was your business on the 14th of April, 1865?
A. My business was carpenter at the theatre.
Q. Were you a laboring man?
A. I was a laboring man, and am still.
Q. At what time did you have dinner?
A. A little after two.
Q. Did you take any that day?
A. Yes, sir.
Q. Where did you get it?
A. Around on F street.
Q. You do not know what occurred while you were gone?
A. No; I do not know what occurred while I was gone.
Q. Are you a married man?
A. Yes, sir.
Q. Were you then?
A. Yes, sir.
Q. Where was your house?
A. In Baltimore.
Q. You did not live here?
A. No, sir.
Q. Did you go to Baltimore every night?
A. No, sir.
Q. On the night before the murder where did you stay?
A. In the theatre; I had a room in the back part of the theatre with the watchman.
Q. At what time did you begin work on the morning of the 14th?
A. I did not work much; I was about the theatre when I got up, I suppose at five, or half-past five.

Q. How long did you stay at the theatre?
A. I staid until the men came to work, and then I went to breakfast.
Q. At what time was that?
A. Between eight and nine o'clock.
Q. Where did you get your breakfast?
A. On F street. Sometimes I would get it at other places.
Q. Where did you that day?
A. I judge I got it over on F street.
Q. When did you breakfast?
A. I cannot tell; I did not look at the time.
Q. Where did you go after breakfast?
A. To the theatre.
Q. How long did you stay there?
A. Until after rehearsal was over.
Q. When was that?
A. About two o'clock.
Q Where did you then go?
A. To get my dinner.
Q. How long were you gone?
A. An hour or an hour and a half.
Q. And you do not undertake to tell what took place while you were there?
A. I only tell what I saw myself.
Q. In that room where the boxes were, with these doors open and this partition taken away, it was so dark you could not see anything?
A. Not with the doors shut.
Q. Suppose they were open?
A. Then there would be a dim light from the front of the box.
Q. When the doors were open then there would be some light?
A. Yes; from the front of the box.
Q. When they came to take away that partition, they did not have any lights, did they?
A. I do not know whether they did or not; I did not see them take it away.
Q. It was in the daytime when they took it away?
A. Yes, sir; between two and three o'clock.
Q. You did not hear about any lights being called for?
A. No, sir; if I had gone up into that box to fix a lock I should have taken a light with me.
Q. But you did not go for that purpose?
A. No, sir.
Q. And when you stood in that box and looked towards the stage, could you have seen anything?
A. Yes; I could have seen the stage.
Q. Could you have seen in the box?
A. No, sir; if I looked at the stage I was looking out into the light; but to look at the box I was looking into the dark place from the light. I could not have seen any person in the back part of the box from the stage.
Q. That is, if the person was in the box and you on the stage?
A. Then I could not see him.
Q. If the person was in the box and you were in the box could you see him then?
A. I might have seen him.
Q. When you went out that night you did not see J. Wilkes Booth in front?
A. No, sir.
Q. You did not see him go into a drinking-house to take a drink?
A. No, sir.
Q. You did not see him come out?

A. No, sir.
Q. You did not see him come up the steps?
A. No, sir.
Q. You did not see him go into the President's box?
A. No, sir.
Q. You did not see him shoot the President?
A. No, sir.
Q. And because you did not see him, you do not want us to infer these things did not take place?
A. No, sir.
Q. You did not see Booth there at all that night?
A. Not that night; I saw him that day.
Q. But you did not see him in the theatre, or in front of the theatre, or in the drinking house, or at all that night?
A. Not that night; no, sir.
Q. You saw some people in front?
A. O, yes.
Q. Whom did you see?
A. I saw a number of people.
Q. Whom did you see?
A. I cannot recollect just the particular persons.
Q. How long were you out in front?
A. Twenty or twenty-five minutes.
Q. What did you go there for?
A. I went out in front to look about.
Q. You did not go to order any people off the platform, or anything of that sort?
A. If I had seen them there I should have ordered them off.
Q. But you did not go for that purpose?
A. No, sir; I did not
Q. Did you see anybody on it?
A. No, sir; I did not.
Q. Did you see the President's carriage?
A. I did.
Q. How did you know it was his?
A. They told me.
Q. Did you see anybody looking into it?
A. I saw a man in livery sitting on the box.
Q. Did you see any man look into it?
A. No, sir.
Q. Did you see any man then go up towards H street?
A. No, sir.
Q. Did you see a man come down from towards H street?
A. I saw one come down from F street.
Q. Whom did you see?
A. I saw Mr. Hess come there, and I saw George Harry.
Q. Who was he?
A. An actor.
Q. What did he do?
A. He was standing there.
Q. Did he say anything to Booth?
A. I did not hear him.
Q. He could not have said anything to Booth in your presence?
A. Not without my hearing.
Q. You are sure he did not speak to Booth while you were there?
A. I do not know whether he did or not.

Q. He could not have done so without your seeing him?
A. I think not.
Q. Then he did not do it?
A. I do not know whether he did or not.
Q. You did not know Atzerodt?
A. No, sir.
Q. Did you see him there that night?
A. No, sir; I saw him afterwards on the trial.
Q. Did you know Payne?
A. No, sir.
Q. Did you see him afterwards?
A. I did.
Q. You did not see any of the conspirators there that night?
A. Not that I know of.
Q. Either in the theatre or out of it?
A No, sir.
Q. Did Harry come down the street with you?
A. No, sir.
Q. Did he speak to you?
A. Yes, sir.
Q. What did he say?
A. I do not recollect; some few words; I do not know what they were.
Q. What were they about?
A. It was about the time for going on; I think he asked me if it was time to be dressing, or something of that sort.
Q. What did you tell him?
A. I did not tell him anything.
Q. What did he say about dressing?
A. I believe he asked if it was time to dress himself, or something of that sort.
Q. And you did not make any answer?
A. I did not make any answer; it was none of my business.
Q. What had you to do with his dressing?
A. Nothing.
Q. Where did he go?
A. He went into the theatre.
Q. Did he dress?
A. Yes, sir.
Q. When you change the scenery to the theatre do you have a signal up in H street and another in the back alley of the theatre?
A. Not that I know of.

(Mr. Bradley objected to this as not proper cross-examination. There had been no evidence about any whistle on F street. Mr. Pierrepont said there was the evidence of Pettit that a whistle was heard in that direction.)

Q. They did not give any signal for moving the scenery outside of the theatre, did they?
A. Not that I know of.
Q. You never heard of such a thing?
A. No, sir.
Q. Did you see Harry again?
A. After the assassination I saw him.
Q. That night?
A. Yes, sir.
Q. At what time?
A. I could not tell exactly; there was a great deal of confusion at the time.
Q. Where did you go that night after the assassination?

A. I staid about the theatre.
Q. Where did you go first?
A. I rushed in on to the stage.
Q. Where next did you go afterwards?
A. I went into the alley.
Q. Did you find anything there?
A. No, sir.
Q. You did not go to examine the box that night? You did not go till some days afterwards?
A. I went on Saturday morning.
Q. Did you say when this partition was taken away?
A. No, sir; I said it had been taken away.
Q. You do not know what was the condition of the curtain when you were not there?
A. I am not certain——
Question repeated.
A. How can I tell what was done when I was not there to see?
Q. You do not know, do you?
A. No; I know the condition when I was there present.
Q. How many curtains were there to that stage?
A. There is one drop curtain.
Q. Was there not another curtain?
A. We had two, but we did not use but one.
Q. Was one a painted curtain?
A. They were both painted.
Q. Did they have pictures on them?
A. One of them had a bust of Shakspeare and a landscape.
Q. That was the one that was used?
A. Yes, sir.
Q. Do you know where Hess is?
A. He is here.
Q. Do you know where Carland is?
A. No, sir; I do not.
Q. Did Carland talk to you any that night?
A. I placed him at the back door after the murder, and told him not to let anybody go out. We staid there in front until the assassination, and then both went in together.
Q. Then you were standing out there when the assassination occurred?
A. Yes, sir.
Q. You did not see Booth go in?
A. No, sir.

By Mr. BRADLEY:

Q. You were asked when you were away from the theatre; were you there at twelve o'clock?
A. Yes, sir.
Q. And if the curtain had been down at twelve o'clock you would have known it?
A. It could not have been down at twelve; the rehearsal lasted until nearly two. The rehearsal lasted nearly all the time from eleven until two.
Q. As to the light in this box, where would it have come from in the daytime?
A. It would have come from the front of the box.
Q. And where would the daylight have been admitted there?
A. (Witness referred to a point on the diagram.) It would have been admitted from these openings.

Q. Then all the light that could have been admitted was that passing through the main body of the theatre from these openings?

A. Yes, sir.

By Mr. PIERREPONT:

Q. You have just stated there was a rehearsal from eleven till two; where were you at that time?

A. On the stage.

Q. On the stage all the time?

A. Yes, sir; it was my business to be there.

Q. You were there all the time from eleven until two?

A. Yes, sir; I was in the theatre.

Q. Did you leave the stage?

A. I might have left the stage between eleven and two.

Q. Then why did you say the curtain could not have been down?

A. Because the room was wanted for the rehearsal. They always want the first entrance, and the curtain rises back of the first entrance.

Q. When they are playing in the theatre the curtain does drop, does it not?

A. Yes, sir.

By Mr. BRADLEY:

Q. And when the curtain drops the actors retire behind it, do they not?

A. Yes, sir.

Q. Except when they sometimes come in front to make their bows?

A. Yes, sir.

The court here took a recess for half an hour.

AFTERNOON SESSION.

C. B. HESS sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. At No. 520 North Fifth street, Philadelphia.

Q. State whether, in the month of April, 1865, you were or not in any way connected with the theatre company performing at Ford's theatre, in this city.

A. I was.

Q. As an actor, or how?

A. Actor.

Q. Do you remember the night of the assassination of the President?

A. I do.

Q. State whether you had any part in the performance that night, and at what time you were to appear.

A. I was not in the American Cousin, but was in a song that was to be sung after the performance of the American Cousin.

Q. A national song?

A. Yes, sir; written expressly for the President.

Q. And who was to sing with you?

A. There was a Miss Gurley, Mr. Phillips—I think it is H. B. Phillips—and myself, with a general chorus on the part of the company.

Q. State whether you were in front of the theatre in the course of that evening?

A. I was in and out of the theatre several times during the evening.

Q. Do you recollect of, at any time, talking with Mr. Gifford or any one else out in front of the theatre?

A. While I was talking with Mr. Gifford and Mr. Carland, there was a gentleman standing on the curbstone, dressed, it seemed to me, like an officer. I thought he was an officer. He had a military coat on, or something like it.

Q. Do you recollect about where you were standing talking with Mr. Gifford and Mr. Carland?

A. At the entrance leading to the stage, called by actors the back door.

Q. Were they there before you or not?

A. Mr. Carland and Mr. Gifford were there before I was.

Q. From what direction did you come towards them?

A. As I came out of the theatre I met them at the door.

Q. Did you leave them?

A. I did.

Q. Which direction did you take then?

A I went right back into the theatre again.

Q. Did you see them afterwards?

A. I did not.

Q. When you came out and spoke to them, was anything said about the time?

A. Yes, sir. I asked them what time it was. Mr. Carland walked as far as the first door in front of the theatre, leading into the audience department, looked at the clock, and came back and told me it was ten minutes past ten. Says I, "Ten minutes past ten; I will be wanted in a few minutes," and then left them immediately and went back into the theatre again. I do not think I had been there more than two minutes when I heard the discharge of a pistol. What afterwards happened I do not know, because there was an uproar all over the house at that time.

Q. At any time in the course of the evening, and shortly before this, had you come from the direction of F street down to where they were standing?

A. Yes, sir; I walked up as far as F street, to Mr. Ferguson's, I think it was, and got a cigar. I then walked back again to the door.

Q. Was that announcement of the time in an audible tone of voice, or was it said in a private way?

A. I asked it in a kind of very loud tone myself, knowing that I had, at least I supposed I had, about a quarter of an hour in which to dress up—to put on a black dress suit—to appear before the President in.

Q. Do you remember how you were dressed that evening?

A. Yes, sir.

Q. State how.

A. I had a light spring overcoat on, and kind of darkish pants.

Q. What is called a raglan?

A. Yes, sir.

Cross-examination by Mr. PIERREPONT:

Q. Did you ever think you looked any like Surratt?

A. No, sir.

Q. When you asked what the time was, and they told you, you pronounced it?

A. Yes, sir.

Q. Which tone of voice was the loudest—the way you asked it or the way you reiterated it after they told you?

A. The way I asked it.

Q. Then you announced it in a lower tone, did you?

A. Yes, sir.

Q. Won't you give the jury a specimen of how it was done?

A. (Speaking in an ordinary conversational tone of voice.) Says I, "Mr. Carland, what time is it?" He walks up in the direction of the clock, and then says, "Ten minutes past ten." Says I, "Ten minutes past ten; I am wanted in a few minutes."

Q. That is exactly what you said?

A. Yes, sir.

Q. And you stated it in that tone of voice?

A. Yes, sir.
Q. You did not turn pale at all?
A. No, sir.
Q. You did not think there was anything to cause you to be agitated in that, did you?
A. No, sir; nothing at all.
Q. You were not agitated?
A No, sir.
Q. What sort of a hat did you wear on that occasion?
A. Kind of a dark hat—not a very high one.
Q. A low hat?
A. Yes, sir.
Q. What sort of shape?
A. Round at the top.
Q. How about the brim?
A. Stiff brim.
Q. Like this one? (handing witness a black felt hat, round top, and stiff brim.)
A. Of the same style; but it had no wire round the brim.
Q. So far as its general appearance was concerned it was the same?
A. Yes, sir.
Q. Did you then wear a moustache?
A. Yes, sir.
Q. The same as now?
A. About the same.
Q. As heavy as it is now?
A. Very near.
Q. And as black as it is now?
A. About the same.
Q. And your hair was the same?
A. My hair was longer.
Q. Was your hair as black?
A. Yes, sir; it always has been.
Q. Was your fulness of face about the same?
A. Yes, sir.
Q. You were no paler then than now?
A. No, sir.
Q. And no more agitated than now?
A. I do not think I was.
Q. When you said what you have stated to the jury, you said it just as you have given it here?
A. Yes, sir.
Q. In that same tone of voice?
A. Yes, sir.
Q. Did you go down to the steps and range yourself in a line with anybody?
A. No, sir.
Q. Did you go and look in the President's carriage?
A. No, sir.
Q. Did you speak to Booth that time?
A. No, sir; I did not see him at all.
Q. Did you see Booth in front of the theatre?
A. No, sir.
Q. Did you see Booth go into the drinking saloon near the theatre?
A. No, sir.
Q. Nor when he came out?
A. No, sir.
Q. Nor when he drank?

A. No, sir.
Q. Did you see him when he went round to the President's box?
A. No, sir.
Q. Where were you at that time?
A. I cannot tell. I was in and out several times.
Q. After you pronounced the time, you did not hasten off towards H street
A. No, sir. I went right into the theatre.
Q. Had you called the time before, that night?
A. No, sir.
Q. That was the only time?
A Yes, sir.
Q. It was done without any excitement, or paleness, or agitation?
A Yes, sir.
Q. And you looked then, as you look now, just about the same?
A. Yes, sir; I was laughing; I am nearly always in a laughing humor.
Q. How do you happen to remember that it was just ten o'clock and ten minutes, at this distance of time—over two years?
A. It was such a night that no person could help recollecting such things.
Q. How do you remember that you said ten o'clock and ten minutes?
A. Because Mr. Carland mentioned it—hallooed it to me.
Q. Did you ever tell anybody about it?
A. Yes, sir; I mentioned it to Mr. Ford.
Q. Where?
A. In Philadelphia.
Q. When?
A. Last year.
Q. It was last year when you mentioned that fact to him?
A. Yes, sir; also to Mr. Carland.
Q. Mr. Carland is here, is he not?
A. Yes, sir.
Q. Did you mention it to anybody else?
A. Not that I know of.
Q. Did you think there was anything extraordinary in its being ten minutes past ten?
A. No, sir; I did not until they spoke about it.
Q. Then you had to hurry, did you?
A. Yes, sir; I had nothing else to do, and I thought that I had better linger inside than outside.
Q. The play was not then near over when the President was killed?
A. No, sir; I think the second scene was on.
Q. There was no occasion then for you to be in a great hurry?
A. No, sir; there was no great hurry.
Q. And you did not hurry?
A. No, sir; I walked on leisurely.
Q. And you were not startled by the announcement of the time?
A. No, sir.
Q. You did not see anybody in front of the theatre that you knew but those you have mentioned?
A. I saw no person but the gentleman standing by the curbstone, and the President's carriage and the driver of it.
Q. Nobody else that you knew?
A. No, sir; except Mr. Carland. There were gentlemen passing on the other side.
Mr. BRADLEY. Do you say all you knew or all you saw? I understand you to say all you saw. Mr. Pierrepont's question was as to who you knew.
A. Mr. Carland was all I knew.

Q. Would you know this other man if you were to see him again?

A. I do not think I would; I was a stranger in Washington, not having been there more than two months.

Q. Which way did you go into the theatre after you made this statement?

A. I went right in through the entrance leading on to the stage.

Q. You are quite sure you did not go back and speak in a low tone to anybody?

A. I am.

Q. You are quite sure you did not range yourself in a line with others in front of the theatre—on a line with the President's carriage?

A. I am.

Q. As soon as you uttered what you have repeated you walked right into the back door?

A. Yes, sir.

Q. Where did you go then?

A. I went on to the stage, and the minute I got there I heard the report of a pistol.

Q. Did you see Booth come through on the stage?

A. I did not; he had by that time, I suppose, jumped from the President's box, and was out of the theatre.

Q. He had jumped on to the stage from the President's box and crossed it before you got there?

A. I do not know what happened after the report of the pistol.

Q. You were on the stage when you heard the report?

A. Yes, sir.

Q. Did you see or hear him leap on the stage?

A. No, sir.

Q. And did not see anybody running?

A. No, sir; I did not hear or see anything at all that happened after the report of the pistol.

Q. You have stated all you know about it?

A. Yes, sir.

Re-examination by Mr. BRADLEY:

Q. Did you ever see Mr. Surratt before? (The prisoner was requested to stand up.)

A. No, sir; never.

Q. You did not see him out there that night?

A. No, sir.

Q. You did not see him go up and come down and speak to Carland and Gifford?

A. No, sir; he did not while I was there.

Q. As well as you can recollect, how many persons were out there besides Carland and Gifford and the man you saw standing by the curbstone?

A. No person but Mr. Lincoln's driver.

Q. You were asked how you fixed this time of calling ten minutes past ten. I understand you to say that immediately after learning the time you went into the theatre, and by the time you got upon the stage almost you heard the explosion of a pistol?

A. Yes, sir.

Q. Had you connected the two things, the calling of the time ten minutes past ten and this fact?

A. Yes, sir; this must have been twelve or thirteen minutes after, I guess, about, from the time I started till I reached there.

Q. Have you any doubt in your mind at all that one of these men, of whom you have spoken, did say in a loud tone of voice "ten minutes past ten?"

A. I have not.

Q. And so far as you now recollect, there was nobody else present except the persons you have mentioned?

A. They are all, sir.

LOUIS J. CARLAND sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. In Boston, Massachusetts.

Q. State whether you were in any way connected with Ford's theatre company in April, 1865, in this city.

A. Yes, sir; I was costumer there.

Q. Do you recollect whether you were at the theatre during the day of Friday, the 14th of April, on the night of which the President was assassinated?

A. I was there from eight o'clock in the morning until after the assassination, with short intervals, when I went on some little business for the theatre.

Q. Do you remember at what time of day it was when you first heard of the President coming there that evening?

A. It was near twelve o'clock.

Q. Do you know John Wilkes Booth?

A. Yes, sir.

Q. Did you see him there that day?

A. I did.

Q. Where?

A. In front of the theatre.

Q. What was he doing?

A. Walking up and down, talking to the men who were about there.

Q. What time of day was it?

A. The first time it was a little after twelve o'clock; some time after twelve o'clock, but not quite one o'clock. The second time, I think, was between five and six. The third time was still later than that. I did not speak to him then, seeing only his back the third time.

Q. Were you there during the rehearsal of that day?

A. Yes, sir; all through the rehearsal.

Q. State what time it took place.

A. It commenced between ten and eleven o'clock; it was after ten, but not quite eleven.

Q. The rehearsal kept up till when?

A. Until two o'clock, on account of a song that was to be sung afterwards. We did not learn until very late that morning that the President was to be there in the evening, and we had, therefore, not much time to prepare for him. A song, entitled "All Honor to our Soldiers," which had been composed by Mr. Phillips, and set to music by Mr. Withers, was to have been sung on the following night, on the occasion of Miss Gurley's benefit. When it was ascertained that the President was coming, it was determined to have the song that night.

Q. And that lengthened the rehearsal?

A. Yes, sir.

Q. Where were you during the rehearsal?

A. A part of the time up in the paint gallery; another part of the time on the stage, and at other times out in front of the theatre.

Q. At any time during that rehearsal did you see the curtain down?

A. No, sir; never.

Q. Have you any recollection at that time of their beginning to fix up the President's box?

A. It was after twelve o'clock. I was in the paint gallery when Peanut John came after Spangler to take down the partition. He was asleep up in the paint gallery at the time.

Q. That night were you out in front of the theatre after the end of the second act?

A. I was.

Q. State at about what time you went, how long you staid there, and who went with you, if any one.

A. When the curtain fell after the second act I was behind the scenes. I went over to that part of the stage called the "O. P." side, which is opposite the prompter, and remained there a moment. Mr. Gifford was giving some directions to Mr. Spangler, who was standing there in his shirt-sleeves, about the scenery. While we were standing there Mr. Dyett, an actor belonging to Miss Keene's company, and Mr. Withers, came up and asked Mr. Gifford and I to join them in a drink. We went with them to the restaurant adjoining, through the side door.

Q. What time of day was this?

A. After the second act; after the curtain had fallen, and before it went up on the second act.

Q. When you went into this saloon did you see anything of Mr. Booth?

A. Mr. Booth was just going out of the front door as we entered through the side door. Mr. Taltavul was wiping the bar off, and I supposed from that Booth had taken a drink.

Q. How long did you remain in the saloon?

A. Until we had our drink. Then Mr. Withers and Mr. Dyett passed back into the theatre through the same door, while we passed out at the front door, and stood at the back door of the entrance where the attachés of the theatre go in.

Q. At that time was Mr. Booth in front of the theatre, or did you see him at any time afterwards?

A. No, sir; I never saw him after that. Mr. Gifford and I stood there talking for some time—perhaps some ten or fifteen minutes.

Q. Did you leave the front of the theatre before you heard of the assassination?

A. No, sir; we staid there until we heard of it.

Q. Now state where you and Mr. Gifford stood.

A. Mr. Gifford and I stood at first a little nearer the back door, near the private entrance. Then we moved more out on the sidewalk up to the carriage platform that was in front of the theatre. Mr. Gifford was looking up at the theatre talking about improvements that he was going to make during the recess. While we were standing there Mr. Hess came out and joined us. He asked what time it was. Mr. Gifford was going to pull out his watch, but instead of doing so turned to me and said, "I fixed the clock in the vestibule by the ball to-day, and it is right by that." I stepped into the vestibule, saw the time, and then told Mr. Hess what time it was.

Q. What time was it?

A. It was ten minutes after ten.

Q. State, if you please, in what direction Mr. Hess went, and whether he went up or down the street at any time.

A. He stood there for a moment and then walked off. I did not pay particular attention as to which way he went; whether he went up the street, or turned back and went into the theatre or not, I have now no recollection.

Q. At the time you went out to that platform was any one sitting on it?

A. I do not think there was. There might have been, but I have no recollection of it. If there had been, Mr. Gifford would certainly have spoken of it and made them get off.

Q. After this crying of ten minutes past ten how long did you remain there?

A. We remained there until a man came out and said to us, "Somebody has shot the President." Mr. Gifford made some rather pleasant remark about its being a story, when the man passed on down the street. In an instant after-

wards we saw two or three people come out, among others one of the ushers of the theatre, Mr. Raybold, who came up to us and said, "Somebody has shot the President, and jumped on the stage and run behind the scenes."

Q. That was a very few minutes after the crying of the time?

A. Yes, sir. Mr. Gifford started immediately to go behind the scenes.

Q. Did you ever see the prisoner at the bar before you saw him here?

A. No, sir; I never saw him before I saw him in the prisoners' dock here. He was pointed out to me.

Q. While you were down there standing in front of the theatre, did you see him, or a man of his height, coming down from F street to two men standing by the theatre, and call the time?

A. No, sir. No one came down and called the time while we stood there.

Q. Do you remember how Mr. Hess was dressed that night?

A. Yes, sir.

Q. Tell the jury.

A. He had on a spring overcoat—a new one.

Q. What color was it?

A. A light gray. He had on a pair of pantaloons almost the same color, but not quite.

Q. Do you remember the shape of his hat?

A. I know the shape of the hat he wore that winter. I do not remember noticing his hat particularly that night. He had a hat with a round, soft crown and stiff brim.

Q. When you announced the time as ten minutes past ten, did Mr. Hess grow very pale, and look very anxious?

A. I did not pay any particular attention to see whether he looked pale or not.

Q. I understood you to say you did not see Mr. Booth in front of the theatre. I ask you if it is possible, in the nature of things, that two men could have stood by that pier of the theatre for twenty minutes after you went out there without your seeing them?

Objected to. Question withdrawn.

Q. Can you say positively whether Mr. Booth was standing for a number of minutes in front of that pier of the theatre?

A. Mr. Booth was not standing in front of the theatre while we were there.

Cross-examination by Mr. PIERREPONT:

Q. What was the color of the hat Hess wore that night?

A. Dark.

Q. Was it black, or what was it?

A. It was very near black. It was a mixture.

Q. Mixture of what. What color was it?

A. White and black.

Q. Checked, was it?

A. No, sir; not checked.

Q. Tell the jury what color it was.

A. It was a hat woven together of different colors, but no decided pattern. It was a mixture of colors.

Q. All sorts of colors?

A. No, sir; not all sorts of colors, but black and white.

Q. The hat you describe is the one he wore on the night in question?

A. I believe so.

Q. Are you pretty sure about it?

A. No, sir; I am not certain about it. I am certain about every other part of his costume, but not about his hat.

Q. After you told him what the time was, did he say anything?

A. He said it was pretty near time for him to go and get ready.
Q. Was that all he said?
A. Yes, sir. I do not remember of anything else.
Q. He did not say anything else about the time, did he, except to ask the time?
A. I think he made the remark that it was pretty near time for him to get ready for the song.
Q. Is that all he said?
A. That is all I remember.
Q. That is every word that you remember of his saying?
A. That is every word that I can call to memory just now.
Q. Which way did he go after he said it was time for him to dress—that being all he said?
A. He went up the street, I believe; then turned, and, as far as I can recollect, went into the theatre.
Q. What is your recollection about it? Did he go up the street, or go directly into the theatre?
A. I cannot call to mind which.
Q. What is your best recollection?
A. The fact is I have no recollection at all about it, any more than his being there.
Q. Do you think he went up the street?
A. He may not have gone very far.
Q. Do you think he went up the street?
A. I cannot say whether he went up the street or not.
Q. What do you wish the jury to understand—that he went up the street, or that he did not?
A. He walked backwards and forwards for a minute or so.
Q. Did he go up part of the street?
A. He went up above where we were standing.
Q. What did he then do?
A. I do not know what he did. He came back again.
Q. How far did he go up?
A. Ten or fifteen feet.
Q. Which?
A. I do not know which.
Q. Did he then go directly into the theatre?
A. I have no recollection whether he went into the theatre. He was one of the attachés of the theatre.
Q. State whether he went into the theatre.
A. I do not know whether he did or not. I was not interested in where he went.
Q. You are from Boston, I believe?
A. Yes, sir.
Q. Born there?
A. No, sir.
Q. Where?
A. In New York.
Q. What has been your business?
A. I am costumer at the theatre.
Q. Did you know Hess before?
A. Yes, sir.
Q. Did you know Booth?
A. Yes, sir.
Q. Did you see Booth when he went into the theatre?
A. No, sir.

Q. Did you see him standing on the pavement?
A. No, sir.
Q. Did you see anybody go to the President's carriage?
A. No, sir.
Q. Did you see anybody go into the drinking-house?
A. No, sir; not after we came out.
Q. Before you came out?
A. I could not see him before I went in, because I went in the back way.
Q. You have been examined before?
A. Yes, sir; before the military commission.
Q. Did you ever state before anything about this crying of the time?
A. No, sir.
Q. Why not?
A. Because I was never asked the question.
Q. Because you never had your attention called to it; that is the reason, isn't it?
A. No, sir; my attention was called to it then as it is now. They tried to make Spangler the man at that time. My attention was called to it as much then as now.
Q. Was your attention called to Spangler?
WITNESS. At that time?
Mr. PIERREPONT. Yes, sir.
WITNESS. When I read Sergeant Dye's evidence——
Mr. PIERREPONT. I asked you whether your attention was called to Spangler on that trial by anybody?
A. Yes, sir.
Q. Who called your attention to it?
A. Lawyer Ewing and Judge Bingham.
Q. Did you see Spangler there that night?
A. I did.
Q. Where?
A. I saw him in the theatre.
Q. Did you see him in front?
A. No, sir.
Q. Did you see Atzerodt?
A. No, sir.
Q. In what places did you see Booth after six o'clock that night?
A. I only saw him going out of the door.
Q. At six o'clock, or about that time, did you see him?
A. It was some time between five and six.
Q. Where?
A. Passing up the street on foot.
Q. Who was with him?
A. There was no person with him.
Q. Which way was he going?
A. He was going towards F street.
Q. Past the theatre?
A. Yes, sir.
Q. Where were you?
A. I was sitting on the steps of the theatre.
Q. What doing?
A. Doing nothing in particular; just amusing myself.
Q. Was anybody with you?
A. No, sir.
Q. You saw him before on that day?
A. Yes, sir.

Q. Where?
A. In front of the theatre.
Q. Where did you take breakfast that morning?
A. In Schwatze's, next door.
Q. When you saw him in the morning, who was with him?
A. He was standing in front of the theatre with some of the people.
Q. Who?
A. I do not know who they were.
Q. Was he talking with them?
A. I suppose so; he seemed to be standing in company with them all.
Q. Who was with him?
A. I do not recollect; there were a great many. Our company then consisted of about forty people; I mean the theatre company.
Q. Can you remember any of them?
A. I could remember them if I could recall them.
Q. Give them all.
A. Well, John Evans was there.
Q. Who else?—that is one.
A. John Matthews was there; Debonay was there; Ferguson was there.
Mr. PIERREPONT. I want every one who was there with Booth.
A. I can't remember all, with Booth.
Q. I am only asking for the names of those who were with Booth in front of the theatre that morning.
A. I cannot tell those that were there with Booth. I am only naming those who belonged to our company.
Q. Can't you give us the name of one that you saw talking with Booth in front of the theatre?
A. No, sir; I cannot remember one.
Q. But you knew them?
A. I knew them.
Q. After breakfast that morning what did you do?
A. Went to work arranging the wardrobe.
Q. How long did you stay there?
A. I was there during the rehearsal, backwards and forwards on the stage.
Q. I believe you stated in your direct examination that you had to leave on some business?
A. That was after rehearsal.
Q. What time?
A. I suppose between one and two o'clock.
Q. Where did you go to?
A. With the stage manager to get the bills altered so as to get a line put in about the expected presence of the President. We stopped at several places, however, before we got there.
Q. On the avenue?
A. No, sir; I did not go down on the avenue the first time; I called at the Republican office, and the telegraph office next door to it on Ninth street; went to a milliner's on Ninth street where they sold ribbons; and also went to a milliner's on E street, a little from the corner of Seventh street.
Q. For the purpose of getting things to decorate the box?
A. No, sir; for the purpose of getting ribbons to make badges for the gentlemen who were going to sing in the national anthem, or whatever it was.
Q. This was the 14th that you were out on this expedition?
A. Yes, sir; in company with Mr. G. B. Wright.
Q. How long were you gone?
A. I suppose about an hour or more.
Q. Did you go anywhere else at that time?

A. I don't remember that we did go anywhere else up Seventh street. He then went to dinner at the Herndon House, and I started and went down to the theatre. I took dinner at the restaurant next door to the theatre.

Q. During all this time that you were out, and the time you were taking dinner, of course you had no personal knowledge of what took place at the theatre?

A. No, sir.

Q. What time did you eat your dinner?

A. I think it was two, or somewhere about that time.

Q. That was after you came back from this other expedition?

A. Yes, sir.

Q. How does it happen that you remember these exact words about the calling of the time, and yet do not remember one of those who were present talking with Booth on that day in front of the theatre, notwithstanding you knew them?

A. Because I do not recollect who in particular were there. I did not take particular notice; I gave a full statement of pretty much everything I knew to Judge Olin; and Judge Olin carried it down to the other place.

Q. Did you state to Judge Olin about calling the time, ten minutes past ten?

A. No, sir; nothing of that kind was asked. What I then stated was entirely connected with myself. Judge Olin asked me to give him a synopsis of my business, from the morning until the night, and I did so. I told him about my being in front of the theatre, and who I was standing with.

Q. Did you tell him about Mr. Hess?

A. No, sir; it was not asked me. I merely answered Judge Olin's questions.

Q. You have told the jury all the words you can remember of Hess saying to you after you told him the time?

A. Yes, sir.

Q. He said nothing else?

A. I do not remember that he did.

By Mr. BRADLEY:

Q. You do not mean to say that Hess did not say anything else, but you do not recollect of anything more?

A. That is it, sir.

Q. Did you know Atzerodt before the conspiracy trials took place?

A. No, sir; I never saw Atzerodt until I saw him at the penitentiary, when I was on the stand as a witness.

Q. Did you ever see the prisoner before you saw him here?

A. No, sir; I never even heard of him.

Q. You were asked as to what enabled you to fix this circumstance of the calling of the time. Did anything happen between the calling of the time and the announcement of the President's death?

A. Nothing; the street was perfectly quiet; there was not a soul, as far as I can remember, on it.

Q. Had that any connection with the fixing of the calling of the time in your memory?

A. No, sir; it has not been fixed in any way.

Q You recollect the fact independently that Hess came and said this?

A. Yes, sir.

The court here took a recess until 10 o'clock to-morrow (Tuesday) morning.

TUESDAY, *July* 9, 1867.

The court met at 10 o'clock a. m.

A. R. EASTMAN sworn and examined.

By Mr. BRADLEY:

Q. State your profession or occupation.

A. I am professor of mathematics at the Naval Observatory in this city.

Q. Were you there in April, 1865?

A. Yes, sir.

Q. On the night of the 14th of April, of that year, state, if you please, whether you were engaged in making observations.

A. I was engaged from about seven o'clock until twenty minutes past eleven o'clock, observing the stars and the planets.

Q. State, if you please, at what time the moon rose that night.

A. It rose two minutes past ten.

Q. In what part of the heavens—how far southeast or north?

A. It was eighteen degrees and a few minutes south.

Q. At eleven o'clock what was the elevation of the moon above the horizon?

A. It would have been about fifteen degrees, the moon being eighteen degrees south; and its motion being slower than that of the planets, it would have been about fifteen degrees above the horizon.

Q. State, if you please, about what arc of a circle the course of the moon described; how high the highest southern elevation would have been or was that night.

A. It would have been about thirty-six degrees above the southern horizon at its highest elevation.

Q. That would have been about on this elevation? (Pointing to the cornice of the room.)

A. Yes, sir; about that.

Q. Less than half way between the zenith and the horizon?

A. Yes, sir; less than half way.

Q. State, if you please, whether the heavens were or not obscured by clouds that evening.

A. At six o'clock that afternoon it was perfectly clear. The wind changed to southwest, and soon after the southwestern portion of the sky became somewhat obscured. At half past seven it was somewhat hazy. At nine o'clock the sky was about one-third clouded. I recollect that it was about one-third clouded on account of an observation made by one of the clerks who was sent to watch at that time. At ten the sky was nearly obscured. At twenty minutes past eleven it was so cloudy that I could not see stars of the third magnitude.

Q. During that evening was there or not a steady increase of earthy haze up to eleven o'clock?

A. I think there was; there was a steady increase of cirrous clouds.

Q. At eleven o'clock can you state whether it was or was not dark?

A. It was comparatively so, because the moon was so much obscured by the haze that the stars could not be seen by a glass, except those of the first magnitude. You could just see their position.

Q. At that time I understand the moon was just fifteen degrees up; and that reaching that elevation the moon would scarce be above the horizon of the hills?

A. Yes, sir; it would have been within fifteen degrees.

Q. Can you convey to the jury an impression of the shadow thrown by a two-story house standing on the south side of the street, fronting north, at that time, between 10 and 11 o'clock?

A. There would have been a shadow on the north side of any house at any time during the night. The moon rising eighteen degrees south of the equator, would not illuminate the north side of any building that night; and as it moved in an arc eighteen degrees south of the equator for the first hour, there would have been no light even if the house was a corner house, within ten or fifteen feet of the opposite corner of the house. It would depend very much on the position of the house how much shadow there would be. If the house stood on the west corner it would have all been in the shadow then.

Cross-examined by Mr. PIERREPONT:

Q. Supposing the house to have stood fair east and west, would there have been any light striking the north side of that house?

A. No, sir.

Q. You say the moon was pretty well covered with haze. Will you tell the jury what you mean by "cirrous clouds?"

A. I mean these very light clouds.

Q. Light thin clouds?

A. Yes, sir; light thin clouds, very much the appearance and outline of curled hair.

Q. They are called "horses' tails" sometimes, are they not?

A. Yes, sir.

Q. That is what you mean by cirrous clouds?

A. Yes, sir.

Q. You could see the stars through them?

A. No, sir.

Q. No part of the time?

A. Not through the cirrous clouds. You could only see stars of the first magnitude.

Q. Cirrous clouds are not uniform, are they?

A. No, sir.

Q. You can see between the cirrous clouds?

A. Yes, sir; between them, but not through them.

Q. When the sky is covered with cirrous clouds, there are spaces between, are there not?

A. Sometimes.

Q. When there is a moon on such a night as this it gives some light, whether there are cirrous clouds or not?

A. It depends upon the density of the clouds. Sometimes the clouds are more dense than at others.

Q. How on the night in question at half past ten?

A. On this night at half past ten, or somewhere between ten and eleven, I went outside of the building and looked at the moon to see if there was any probability of my observing when it came to meridian at three o'clock in the morning. I could just see the form of the moon.

Q. Now would you tell the jury if this was not Friday before Easter Sunday?

A. I am not well enough posted to answer that question.

Q. Will you tell the jury what is the condition of the moon at Easter always as to its full?

A. I do not know.

Q. What makes Easter at all? Has it anything to do with the moon?

A. I am not posted about that matter.

Q. Then you are not a theological professor as well as astronomical? But cannot you tell us whether Easter refers to the condition of the full moon?

A. No, sir.

Q. Can you tell the jury as to what was the condition of the moon as to its full?

A. Yes, sir. The moon was full on the morning of the 11th of April at 4 o'clock in the morning; consequently it was about three days past full, towards the last quarter—about two-thirds full.

Q. Will you take this almanac, (Tribune Almanac of 1865,) look at it and state whether or not it gives a correct condition of the moon as to its full on the 14th day of April, 1865, in Washington?

A. This almanac states that the moon rose at three minutes past ten.

Q. I am asking as to its full?

A. It says it was full on the tenth day, eleven hours and twenty-one minutes.

Q. Does it say on the tenth?

A. Yes, sir.

Q. Was it on the tenth?

A. The Nautical Almanac which I took as authority, says it was on the eleventh.

Q. I understand that to be the eleventh in the almanac. I am not sure that I am right. Now look again and see when the moon rose according to that almanac.

A. It rose at ten hours and three minutes; in other words, at three minutes past ten.

Q. I call your attention to the fact that the almanac you have was calculated for the latitude of Washington. Look again and see when the moon rose on that night.

A. At nine o'clock and fifty-nine minutes.

Q. How many minutes difference did you make in your calculation from that?

A. Three minutes.

Q. Where did you calculate it from?

A. From the latitude of Washington.

Q. In calculating it did you refer to any almanac?

A. I took the position of the moon from the Nautical Almanac.

Q. Do you find in any almanac that the moon rose three minutes different from that?

A. The Nautical Almanac does not give the time; I computed it.

Q. Could not you have made a mistake of three minutes?

A. Yes, sir; I suppose I could.

Mr. PIERREPONT. Well, I think you did.

Mr. BRADLEY objected to that description of remark to the witness, who was a scientific man.

By Mr. MERRICK. Are you satisfied that your calculation is correct?

A. My calculation was made twice and checked by another man two or three days ago.

Q. Are you satisfied it was correct?

A. Yes, sir.

By Mr. PIERREPONT:

Q. But you are also satisfied it might have been incorrect?

A. I am not satisfied that it was incorrect.

Q. But you are satisfied that you might have made a mistake of three minutes?

A. Yes, sir; if I had intended, but not otherwise.

JAMES R. FORD—residence Baltimore—sworn and examined.

By Mr. BRADLEY:

Q. State whether you were at any time connected with a dramatic establishment of John T. Ford, in the city of Washington, in 1865.

A. Yes, sir; I was, from the 1st of January up to the end of July, in 1865.

Q. Please to state what was your position in April, 1865?

A. I was business manager.

Q. On the 14th of April were you in charge of the theatre?

A. Yes, sir.

Q. Where was your brother, the proprietor?

A. My brother was in Richmond on the 14th of April.

Q. Had you charge of the theatre at that time?

A. I had.
Q. Where did you board at that time?
A. At the National Hotel.
Q. And lodge?
A. I lodged over the theatre in an adjoining house.
Q. Did you know John Wilkes Booth?
A. Yes, sir.
Q. How long did you know him?
A. I have known him for about ten years.
Q. Can you state whether he was or was not boarding at the National Hotel at that time?
A. He was always boarding at the National Hotel, as far as I remember, when in Washington.
Q. On the morning of the 14th of April, state whether you were at the office of the theatre and received any intimation that the President intended visiting the theatre?
A. Yes, sir; I was at the office from ten o'clock until half past eleven o'clock. The President's messenger came about half past ten o'clock and inquired if he could get a box that evening, and said that the President, his lady, and General Grant were going to the theatre.
Q. Then you say about half past eleven o'clock you left the theatre. Did you make any arrangement for the decoration of the box before you left the theatre?
A. No, sir.
Q. Where did you go when you left?
A. I went to the Treasury building and saw Colonel Jones, to get some flags to decorate the box with.
Q. Do you remember how long you were absent?
A. I was absent from the theatre about an hour, I should judge.
Q. Can you state whether when you returned there was any rehearsal going on, or whether it had not begun?
A. The rehearsal began before I left the theatre.
Q. Was it going on when you returned?
A. I cannot exactly state. I do not know whether it was or not. It should have continued on.
Q. Who prepared the advertisements for the President's visit on that occasion?
A. I did.
Q. Was that your ordinary duty?
A. No, sir; Mr. Phillips, the stage manager, ordinarily did that work. He was busy at rehearsal at the time and could not attend to it.
Q. Was that advertisement prepared before you went to the Treasury or after your return?
A. Before I went. I took one of them as I went to the Treasury building.
Q. Before you left, and when you returned, was or was not the curtain up?
A. When I left the theatre the curtain was up, and the rehearsal was just commencing.
Q. Did you see Booth that day?
A. Yes, sir.
Q. Do you recollect when and where?
A. I saw him at about half past twelve o'clock, at the corner of E and Tenth streets.
Q. Which way were you going then?
A. I was going down E street towards the theatre.
Q. And he was going up which street?
A. He was going up E street.
Q. Were you in Washington that night?

A. No, sir; I was there after ten o'clock.

Q. Previous to that time where were you?

A. I went to Baltimore with Mr. John T. Ford's wife's sister at half past three o'clock.

Q. At what time did you return?

A. I left Baltimore at 8.50.

Q. And arrived here at what time?

A. At twenty-five minutes past ten.

Q. State whether you called at the theatre after your return?

A. Yes, sir; I got into an F street car at the depot and rode up to the theatre.

Q. Did you ride inside of the car?

A. No, sir; I was out on the front platform.

Q. Did you notice the character of the night as you came up from the depot to the theatre, as to whether it was light or not?

A. It was a cloudy evening.

Q. Do you recollect whether the moon was visible?

A. I did not see it.

Q. At what time did you get to the theatre?

A. About twenty-five minutes past eleven o'clock, I judge I got there.

Q. That was after the assassination?

A. Yes, sir.

Q. How do those doors that lead from the vestibule into the theatre open? Do they push or pull?

A. They all opened outwards towards the street.

Q. You could not open them by pushing against them?

A. No, sir.

Q. Do you recollect whether Booth had engaged either of these boxes, No. 7 or 8, a short time before the assassination?

A. Yes, sir; he engaged the lower private box some two or three weeks before the assassination, and afterwards changed it for an upper box and took box 7. It was the box he generally occupied when he came to the theatre.

Q. Do you remember whether there were ladies with him that night?

A. He said he engaged the box for ladies.

Q. Did he come himself?

A. Yes, sir.

Q. Were ladies with him?

A. Yes, sir.

Q. Do you know who they were, any of them?

A. They came from the National Hotel, I believe.

Q. Did you know any of the ladies?

A. I did not know any of them personally.

Q. Were they ladies you had seen at the National Hotel, or any of them?

A. Yes, sir.

Q. Who were they?

A. They were the Misses Hale, I believe.

Q. They were none of them members of the Surratt family?

A. I never knew any of the Surratt family.

Q. Did you ever see the prisoner at the bar before you saw him here? (Prisoner stood up.)

A. Not to my recollection.

Cross-examined by Mr. PIERREPONT:

Q. Did you ever know Miss Hale?

A. No, sir; not personally.

Q. Did you say there were two Misses Hale there?

A. Yes, sir; I saw two ladies.
Q. Did you see two Misses Hale there?
A. Yes, sir.
Q. What were their names?
A. I do not know their names.
Q. Had you ever seen them before?
A. I had seen them at the hotel before.
Q. Were they both the same size or different size?
A. One of them was a little larger than the other.
Q. What colored hair had they?
A. I think they had dark hair.
Q. Which had dark hair?
A. I cannot exactly state which had dark hair.
Q. Had one light hair?
A. No, sir.
Q. Both dark?
A. Yes, sir.
Q. Had they both dark eyes?
A. I never took notice of their eyes.
Q. Were they large or small?
A. One was an ordinary sized lady.
Q. Which one?
A. Neither was very large nor extremely small.
Q. What would you say as to their height; were they tall or the contrary?
A. The largest one was a medium sized lady.
Q. Was she thin or stout?
A. I do not remember exactly.
Q. She had black eyes?
A. I do not remember her eyes.
Q. But she had black hair?
A. Dark hair.
Q. Quite dark?
A. I cannot exactly tell you the shade of her hair
Q. What kind of hair had the short one?
A. She had dark hair.
Q. And dark eyes?
A. I do not remember the eyes at all.
Q. Was she small?
A. No, sir.
Q. Was she short?
A. She was a medium sized lady. She was not very short.
Q. But the other one you said was a medium sized lady; I am now speaking of the one not medium sized.
A. They were very nearly the same size.
Q. Was she stout or thin?
A. Rather stout.

By the DISTRICT ATTORNEY:

Q. How often did you say Booth occupied a private box with ladies?
A. I do not remember seeing him more than twice.
Q. Did he have several ladies on both occasions?
A. I do not remember on both occasions.
Q. What interval was there between them?
A. I cannot recollect that.
Q. Can you give any description of the ladies he had on the other occasion?
A. No, sir.

Q. How many did he have?

A. I do not know. He merely said he was going to bring some ladies, and I saw him come in with some. I do not know whether he had two or a dozen.

Q. Do you know Miss Fitzpatrick, of this city?

A. No, sir.

Q. Do you know a Miss Dean, of this city?

A. No, sir.

By Mr. PIERREPONT:

Q. During the rebellion, what side did you take?

Question objected to by Mr. Bradley.

Mr. PIERREPONT said he proposed to ask the witness this question, and probably should ask several others the same question; that as a matter of law he had a right, on cross-examination, to ask the question for the purpose of showing the temper and standing of the witness in relation to the murder of the President of the United States.

Mr. BRADLEY said he supposed it might tend to degrade him.

The COURT said that understanding the question to apply simply to whether the witness took sides in the rebellion, and not as to his political relations, he would allow the question to be put.

Mr. MERRICK. And the witness answer or not, as he pleases?

The COURT. The witness may answer or not, as he pleases.

Mr. PIERREPONT (to witness.) What is your answer, or do you decline to answer?

WITNESS. I decline to answer.

Mr. PIERREPONT. Then you may go.

The witness left the stand, and after some conversation with the counsel for the defence, Mr. Merrick announced to the court that the witness desired to answer the question last put to him.

Mr. PIERREPONT said he did not desire to ask the witness any more questions; that the witness had left the stand, and he had done with him.

Mr. BRADLEY remarked that the witness did not understand the question, and that he desired to make an explanation.

The COURT said the witness left the stand, and directed counsel to call another witness.

Mr. BRADLEY remarked that the witness desired himself to make an explanation, lest his refusal to answer the question should be misunderstood.

The COURT said the witness had the question fairly put to him, and that it was not for counsel on one side or the other, or for the court, to dictate to him what answer he should make. The witness had made his answer, and that was an end of it.

Mr. MERRICK desired it to be distinctly understood that the counsel had not dictated to the witness any answer. They had merely asked him if he understood the question.

The COURT said the counsel should have asked the question before the witness left the stand; and directed them to call another witness.

Mr. BRADLEY desired an exception to the ruling of the court to be noted.

WILLIAM DIXON, chief engineer United States fire brigade, Washington, sworn and examined.

By Mr. BRADLEY:

Q. What position did you hold in April, 1865?

A. The same I hold now.

By Mr. MERRICK:

Q. Do you recollect anything about the condition of the night of Friday, April 14?

A. I do, sir. About half past nine that night, an alarm of fire was struck from box 25. The fire proved to be a bonfire in the direction of Kendall Green. I rode a horse to that fire.

Mr. PIERREPONT asked what that bonfire had to do with this case.

Mr. MERRICK desired the witness to go on, in his own way, remarking that if the horse stumbled because it was a dark night, it might have something directly to do with it.

After some conversation, the witness was directed to proceed.

WITNESS. In going to the fire the route I took was down H street. I struck H at its intersection with New York avenue, and kept on down H street.

Q. You entered at Dr. Gurley's church, did you not?

A. No; that church is on New York avenue, I believe, above Thirteenth. It was a dark night, and cloudy—so much so that I was obliged to proceed cautiously along the street. I returned the same route, the fire proving to be a bonfire, and noticed also on my return that it was dark and cloudy.

Q. At what time did you get back?

A. I could not state the hour; it was after 10 o'clock. On my return to my office, after cleansing my hands and washing myself up, an officer of the War Department was in front, who said I was sent for, and directed me to have the engines and apparatus in readiness at a moment's notice. They were afraid that arson would be perpetrated. He told me he was directed at the War Department to give these orders. I reported at the War Department, but the guards would not allow me to enter the building.

Q. At what hour was that?

A. It was near 11 o'clock. I remained about the office on Pennsylvania avenue, between that and the War Department, waiting for further orders until nearly 2 o'clock the next morning.

Q. You received some direction, did you, at your office, after you returned home, which led you to go on down towards the War Department?

A. Yes, sir.

Q. At what hour was that relative to the time you heard of the assassination of the President?

A. I heard it from an officer who came to give me the orders.

Q. And in conformity with these instructions you went out?

A. I went out to report to the department, to General Hardie.

Q. What was the condition of the night when you went down to report to the War Department?

A. It was dark.

Q. Did you see any one passing, while you were down there, at any time—any horses, troops, or anything else?

A. A squadron of cavalry passed me when I was near Eighteenth street, going fast down Pennsylvania avenue.

Q. Can you fix approximately what time of the night that was?

A. It was close to 11 o'clock. I could not say the exact hour.

Q. Tell us, as near as you can, anything that occurred showing how dense the darkness was—whether you could recognize the color of the horses.

A. I could not recognize the color of the horses. The apparatus that night came near running into a wagon while passing to the fire up New York avenue. The driver told me it was so dark that they came near driving into a wagon.

Cross-examined by Mr. PIERREPONT:

Q. What apparatus do you allude to?

A. The government fire-engines.

Q. Was there any light on it?

A. They have two lights, one on each side—or had then.

Q. Those lights gave some light, did they not?

A. On the side they did, but not before the driver.

Q. Did you look to see whether there was a nearly full moon up an hour high at 11 o'clock?

A. In going to the fire there was no moon up.

Q. No moon up at 11 o'clock?

A. This was previous to that time.

Q. At what time was it that there was no moon up?

A. About half past 9 o'clock, when I went to the fire.

Q. And do you know at what time the full moon rose that night?

A. I do not.

By Mr. BRADLEY:

Q. I understand you to say, that you could see no moon, although you looked at the heavens?

A. I could not; the heavens were obscured by clouds.

A. C. KIESECKER—residence Washington, corner Sixth and H streets—sworn and examined.

By Mr. MERRICK:

Q. Where did you reside in April, 1865?

A. At the same place I do now.

Q. What house is the next house to yours on H street west?

A. Five hundred and forty-one, (541.)

Q. Did you know whose house it was?

A. No, sir.

Q. State to the jury how your house fronts, and how near the front of it is to 541?

A. My house at that time fronted on Sixth street, towards the east; and the house run back towards the west along H street for 75 feet, I think. Since then I have been building and have changed the front to H street.

Q. I speak of that time. You say it run back from Sixth street 75 feet. How near did the end of the house, at a distance of 75 feet from Sixth street, come to the house 541?

A. I suppose about nine feet. There was a three-foot alley and about six feet between that and the rear of the house.

Q. Then the front of that house on Sixth street was about 84 feet from 541?

A. Yes, sir.

Q. State how the steps of your house were arranged.

A. The steps of my house ran from the landing up to the second story front.

Q. Did they run towards H street?

A. Towards H street, descending to 12 or 15 inches of the building line on H street.

Q. Do you recollect the night of the President's assassination?

A. I do.

Q. Where were you that night?

A. I was at my place of business until about half-past nine or fifteen minutes of ten o'clock, the usual time of closing.

Q. Where did you go then?

A. I went home to my place of residence.

Q. What did you do?

A. I sat from about ten till very nearly eleven before my door, smoking.

Q. Whereabouts before the door?

A. On the lower step most of the time, and partly walking on the pavement. I do not know whether I was sitting all that time or not. I might have been

on the pavement walking backwards and forwards, most of the time sitting on the lower step.

Q. When you were sitting, how near to the line of H street were you?

A. I was sitting on the lower step. It was not more than fifteen inches from the corner of the building.

Q. Was that a quiet neighborhood at that hour of the night, and was it quiet that night?

A. Yes, sir; after ten o'clock it is generally quiet.

Q. What kind of a night was it as to light or darkness?

A. To the best of my recollection it was clouded over. It was pretty dark.

Q. While you were sitting there did you hear any conversation occur between parties on the street and parties in 541, speaking from the window?

A. No, sir; not in my hearing.

Q. Were you near enough to hear an ordinary tone of voice, such as would be addressed to a person in a window, from the street?

A. I think I was.

Q. Had there been a conversation there in the ordinary tone of voice, do you think it likely you would have heard it?

A I think I would, at that distance, and at that time of night.

Q. It was very quiet, I understand you. How far could you see a man that night—did you observe?

A. I think on that side of the street, I could see a man from forty to fifty feet, but could not tell who he was; that is, it was too dark to tell who the person was.

Cross-examined by Mr. PIERREPONT:

Q. Do you know any more about this case?

A. No, sir; that is all I know.

Q. Let us see if you do not know something more. Did you go to bed that night?

A. Yes, sir.

Q. Did you hear of the murder of the President that night?

A. Not until the next morning when I got to my store.

Q. You went to bed in pretty good season, did you?

A. Within a few minutes of eleven.

Q. Was there not a good deal of noise and excitement on the street before eleven o'clock?

A. No, sir; I remarked the next morning that I had been sitting on my steps, and never heard of it until my clerk told me at the store.

Q If there had been a great deal of excitement there on the streets about this fact, you would have heard something of it, would you not?

A. I would.

Q. But you infer that there was not, and that they kept pretty still about the assassination that night?

A. I did not know anything about it.

Q. They kept it entirely from you?

A. I did not hear anything until I was at the store next morning.

Q. Did you look at the clock when you went to bed?

A. No, sir.

Q. Were not you a little surprised the next morning that you had not heard of it the night before?

A. I was surprised at it.

Q. H street runs this way, (illustrating with a book,) and Sixth street this. This was the front of your house. Now where were you sitting?

A. Twelve or fifteen inches lower down Sixth street, on the first step.

Q. Were you there all the time?

A. From ten until a few minutes of eleven.
Q. When you were smoking, was anybody with you?
A. No, sir.
Q. Did you see any person pass?
A. Yes.
Q. Who?
A. I could not tell. I paid no attention to who passed.
Q. Yours is a brick house?
A. Yes, sir.
Q. And you were sitting in front of the house on Sixth street. From where you were sitting to the rear of the lot was seventy-five feet. Then between that and 541 is an alley three feet and a brick wall between the house and the alley, as I understand?
A. Yes, sir.
Q. And you were so situated that if there had been an ordinary conversation in that house you could have heard it?
A. Not ordinary conversation. I think I could if anybody had been talking out of the window to another person in the street.
Q. And you think they could not do that without your hearing them?
A. I think I should have heard if they had been talking.
Q. But you did not hear a thing?
A. No, sir.

By Mr. MERRICK:

Q. The counsel says you were sitting in front. As I understand you, you were sitting on the steps of your house?
A. On the first step near the corner. The steps cross nearly the whole house and enter the second story, going down, as I have said, within twelve inches of the corner towards H street.

By Mr. BRADLEY:

Q. You were sitting on the bottom step with your face towards the corner and your feet on the pavement?
A. Yes, with my feet on the pavement.
Q. Can you tell whether you were leaning back or sitting forward?
A. No, sir.
Q. Were you not sitting where you could look up H street?
A. If I had been leaning forward, I could. I do not think a person from where I was sitting could conveniently look up H street, because I usually sit in a straight position. I might during that time have been standing out on the sidewalk; I do not recollect.
Q. But I understand you to say you were sitting a great part of the time, although you may have got up and walked about.
A. Yes, sir.

By Mr. MERRICK:

Q. How do you recollect about the time of your going to bed?
A. Mrs. Kiesecker called me and said it was time to go to bed; that it was ten minutes to eleven o'clock. She was sitting up in the room reading. I told her to let me finish my cigar first.

By Mr. PIERREPONT:

Q. How many cigars did you finish?
A. One.
Q. How long did it take you to smoke that cigar?
A. I sometimes smoke a cigar in an hour, sometimes in half an hour.
Q. How long did it take you to smoke that cigar?

A. I went out there at 10 o'clock, and I suppose I smoked it until nearly 11 o'clock.

Q. Did you walk about when you were smoking?

A. I do not recollect; I may have done so.

Q. Did you sit on that front step all the time?

A. I must have done so most of the time. I may have been partly walking.

Q. It was on the front step, was it, on Sixth street?

A. Yes, sir.

Mr. PIERREPONT. That is all.

By Mr. MERRICK:

Q. With your face towards H street?

A. Yes, sir; I could not sit backwards.

Mr. MERRICK. That is all.

JAMES LAMB sworn and examined.

By Mr. BRADLEY:

Q. State your profession.

A. Scenic artist or scene painter.

Q. Were you in any manner connected with Ford's theatre in the month o April, 1865?

A. I was engaged there in my profession.

Q. In Washington, on Tenth street?

A. Yes, sir.

Q. Do you remember the 14th of April, the day on which the President was assassinated?

A. Yes, sir.

Q. Do you remember where you were occupied during a great part of that day? State at what time you came to, and what time you left the theatre.

A. I was engaged in the painting-room of the theatre from nine o'clock that morning until six or a little after in the afternoon of that day.

Q. Describe to the jury the situation of the painting room.

A. It occupies a position in the rear of the theatre, facing the rear wall, at an elevation of about thirty-six or thirty-seven feet from the stage, commanding an entire view of the stage, right and left.

Q. State whether the side next to the stage is open or not.

A. It is open. There is a mere railing at the back, so that a man has a full view of the stage and of the auditorium; not of the auditorium entirely; you can see into the orchestra, and into a portion of the parquette.

Q. Who was assisting you in your painting room that day?

A. I had a black boy who was employed in grinding colors and in raising the paint frame up and down, and such work as I required him to do.

Q. What were the other duties of that black boy, when not engaged by you?

A. He was with me during the day. He was occupied in the evening in assisting another boy about his size in raising and lowering the curtain.

Q. State whether one person could raise and lower that curtain, or whether it required more force than one.

A. I have never seen one person raise or lower it—always two. Two were employed especially for that purpose.

Q. State whether, from that position, you could see when the rehearsal was going on.

A. Yes, sir; I had a full view commanding the stage.

Q. On the 14th of April was there any rehearsal?

A. There was.

Q. Can you recollect the time?

A. It commenced at about ten o'clock. The usual time of commencement of rehearsals was about ten o'clock.

Q. How long did it continue?
A. Until two, or half past; somewhere about that time.
Q. During that time was that curtain up or down?
A. Up the whole time, most decidedly.

Cross-examined by Mr. PIERREPONT:

Q. What countryman are you?
A. I was born in England. I have been in this country some twenty-seven or twenty-eight years.
Q. Did you take any part in this struggle which we have been through?
A. No part whatever.
Q. Did you express yourself on one side or the other?
Question objected to by Mr. Merrick, withdrawn, and put in this form:
Q. Did you express any sympathy on the rebel side in the late war?
Question objected to by Mr. Merrick as having no pertinency to this issue. This was not a trial for treason.
Mr. PIERREPONT insisted upon the question as proper, on a cross-examination, for the purpose of disclosing the feelings and partialities of the witness.
The COURT decided that the question might be put and that the witness might answer or not, as he saw proper, there being, in his judgment, no difference between the question put and the question on a ruling which had already been made, as to whether the witness had taken sides in the late war.
Mr. BRADLEY desired an exception to this ruling to be noted.
The witness was directed to answer the question.
A. I did.
Q. And you felt it?
A. I have felt sympathy on occasions when I have seen men on either side butchered.
Q. You feel it now?
A. Yes, sir; I feel it now, on both sides. I am a peace man.
Q. Your peace feelings, however, rather ran against the North at that time?
A. No, sir; by no means.
Q. Did your peace feelings run in favor of putting down the rebellion by arms?
A. They did not.
Q. You thought it ought not to have been done?
A. I did think so.
Q. You thought the rebels ought to have had their own way?
A. No, sir; I thought the thing could have been arranged differently altogether.
Q. You say you thought the rebellion ought not to have been put down by arms?
A. I did.
Q. Did you take any dinner on the 14th of April?
A. No, sir; I never dine when I am at work.
Q. Did you take anything to eat?
A. I do not know as I did; I think it is very unlikely I did.
Q. Did you take anything to drink?
A. That I may have done.
Q. You do that sometimes?
A. I do that sometimes.
Q. Did you go out of the theatre that day?
A. No, sir; not until I left after six o'clock to go home.
Q. You came there about nine o'clock and left after six. Were you there during the whole day?
A. Yes, sir; I was there, in that room.

Q. Where is that room?
A. The highest floor of the theatre—away from everybody.
Q. Back of the stage?
A. Back of the stage, very high up.
Q. What were you doing that day?
A. Painting.
Q. What were you painting?
A. A scene in Enoch Arden, a piece Mr. Ford contemplated bringing out. It was left undone in consequence of what occurred.
Q. Was it a thing that occupied your mind?
A. Entirely.
Q. You were greatly absorbed in that scene from Enoch Arden, were you not?
A. Well, I had got the thing into my mind, and was mechanically working on it.
Q. Then it did not absorb your mind?
A. Yes, sir, it did.
Q. Then it did?
A. It did on some occasions, and on others it did not.
Q. On the whole, did it or did it not absorb your mind wholly?
A. About the same as usual.
Q. How was it? I ask you whether it absorbed your mind?
A. Not to the exclusion of other matters.
Q. Do you understand the meaning of the question?
A. I do.
Q. Can you answer it?
A. Not entirely.
Q. Then it did not much?
A. Some portions of the painting required more attention and more study than others.
Q. Did you give it attention?
A. On some portions of it I did. The mechanical portion, you or any other inexpert could have done as well as I.
Q. But during that portion of it you gave your attention to it, did you not?
A. While I was painting particular portions of it I gave attention to it.
Q. Did you do your work well?
A. I believe I did.
Q. Does it require attention to do it well?
A. Sometimes not very great attention. You see I have been employed in this thing for a number of years, and it is a mere matter of form painting some things.
Q. But in painting this it was new, was it not?
A. Rather new.
Q. I want you to tell me whether it did occupy your mind or did not occupy it, either way?
A. If you had been reading a newspaper there I could have heard every word, probably, you read.
Q. Do not you think you might have stopped to ask me to read over some passage? Would not that have been natural?
A. Well, if I had not heard it it would.
Q. Which way was your scene placed?
A. The scene was placed against the wall, and its face towards me.
Q. Which wall of the theatre?
A. The rear wall of the theatre.
Q. Could you see to paint any portion of that without looking at it?
A. I sometimes paint without looking at it.

Q. Not all the time. Calling that the rear of the theatre, (illustrating,) you stood with your back this way, did you not?

A. Yes, sir.

Q. Your eye was directed to the rear of the theatre on the canvas you were painting on that wall?

A. Yes, sir; the canvas was there and was raised up and down in front of me.

Q. You did not paint that without looking at it?

A. Occasionally I could. I have done painting running it along, and at the same time looked at something probably going on.

Q. Was that your general style of painting?

A. Not my general style; an exception to my general rule.

By Mr. BRADLEY:

Q. In regard to your sympathies, did your sympathies lead you to wish the overthrow of the government of the United States?

A. Not by any means.

Q. In regard to your position to that painting, was it possible for that curtain to have been drawn up and you not know it?

A. No, sir; it made too much noise; and another thing, the boy who raised it was at all times in my presence, waiting on me. He could not have raised it without my knowing it.

Q. When the curtain was down was not the auditorium of the theatre quite dark?

A. No, sir.

Q. Where did it get its light?

A. The light was received from the windows in the auditorium.

Q. Were the windows open in the auditorium?

A. Generally; yes, sir.

Q. What would have been the effect upon your room if the curtain had been down?

A. It would not have inconvenienced me at all. I received my light from the sky-light in the ceiling.

Q. That curtain could not have been let down without your knowing it?

A. I am certain of it. It would have drawn my attention immediately. I was there quiet, and any little footstep would have attracted my attention when painting.

Q. Do you recollect taking anything to drink but a glass of beer sent up to you there?

A. It is very likely I did. I have no distinct recollection. My usual way of sustaining myself while there was by taking a little crust of bread or something, and sending out for a glass of ale, and eating that. I got very dirty in painting, and did not care to go out, and I generally took my dinner, or lunch, or whatever you call it, in my paint room.

By Mr. PIERREPONT:

Q. You tell us now it was so still that the least noise would have attracted your attention?

A. On ordinary occasions.

Q. On this occasion?

A. No; I do not think it was. There was a rehearsal going on.

Q. Then what you say did not apply to this occasion?

A. No.

Q. Then it had better never have been said. I understand you that this rehearsal made some noise?

A. It was the usual noise. I would have been like a miller hearing the drum-wheel. Anything out of the ordinary would have attracted my attention.

Q. Then the rehearsal was in a monotone like a drum wheel?

A. All in one tone. Anything like the lowering of the curtain would have attracted my attention.

Q. What was the piece they were rehearsing?

A. The American Cousin.

Q. In that there is some little movement and noise, is there not?

A. Yes.

Q. Considerable, is there not?

A. Nothing very particular.

Q. Is there not just as much as if it was being exhibited?

A. No; they walk very quietly on and very quietly off.

Q. They do not go through any of those movements they do while playing?

A. No, sir.

Q. Then a rehearsal is not very much like an exhibition?

A. Not at all. You would not recognize it as the same.

Q. Still and silent, is it?

A. Quiet.

Q. Now won't you tell us about the curtain? Did you look at it that day?

A. No, sir.

Q. Do you know which curtain it was?

A. The curtain I presume to be the drop curtain.

Q. Do you know anything about it, whether it was up or down, that day?

A. I am sure the green curtain could not have been lowered. It goes down with a rattle—makes more noise than the other.

Q. The drop curtain has pictures on it, has it not, and is tied up partly drop?

A. It was not partly drop; it was away up.

Q. How do you know; did you examine?

A. No, sir.

Q. Have you thought on that subject until now?

A. No, sir.

Q. Never until this trial?

A. No, sir.

Q. And all that time you never had your attention called to the subject of the curtain?

A. No, sir.

Q. And you tell us that if one curtain was down, it would not be dark in the boxes?

A. It would not interfere with the light of the boxes.

Q. Then the boxes would be light if the curtain was down on the stage?

A. The boxes receive their light, if any, from the windows of the auditorium.

Q. They do not receive any from the stage?

A. No, sir.

Q. And the curtain being down did not darken the boxes?

A. No, sir; the boxes were always dark. The curtain was up.

Q. But you tell us they were lighted from the windows?

A. If they were lighted at all, it was from the windows.

By Mr. BRADLEY:

Q. Could they have gone through the rehearsal with the curtain down? Would not the curtain being down have interfered with the rehearsal?

A. It would have come down on the very spot where they had all their rehearsal. The rehearsals are generally carried on from the foot-lights back to the second entrance.

Q. Did not the curtain come down into the first entrance?

A. It comes down into the tormentor entrance. You may call it the first entrance.

CHARLES M. SKIPPON, lieutenant of police, Washington city, sworn and examined.

By Mr. BRADLEY:

Q. In 1865 were you connected with the police?
A. I was then sergeant of police.
Q. What was your district in the spring of 1865?
A. It consisted of the third ward, sixth precinct.
Q. Did it embrace the square on which Ford's theatre stood?
A. Yes, sir.
Q. State if there was any oyster-house on the south side of that square, on E street, between Ninth and Tenth.
A. No, sir.
Q. Was there any oyster-house, unless Miller's saloon may be called one, on the south side of F street, on the square the theatre was on?
A. I have no recollection of any oyster-saloon being there, with the exception of an eating saloon of a gentleman by the name of Gilbert.
Q. That was entered up a flight of stairs?
A. Yes, sir.
Q. And it was an eating saloon, not an oyster saloon?
A. He may have served up oysters. I do not know.
Q. Was there any oyster saloon on that side of the square which opened level with the street?
A. Not to my knowledge.

Cross-examined by the ASSISTANT DISTRICT ATTORNEY:

Q. Where was the Tontine House?
A. On D street, between Ninth and Tenth.

WILLIAM BOSS, residence Washington, sworn and examined.

By Mr. MERRICK:

Q. How long have you lived in this city?
A. All my life.
Q. Did you know John Lee?
A. Yes, sir.
Q. Did you know his reputation for truth and veracity?
A. I never heard it questioned until after he testified in this case.
Mr. PIERREPONT. Then that is the end of the matter.
Q. Did John Lee ever say to you that he did not know John H. Surratt?
(Question answered by witness, but answer subsequently stricken out by direction of the court.

The district attorney objected to the question on the ground that the witness, Lee, had never been asked relative to any such conversation with this witness.

Objection sustained by the court. Such a question could not be asked unless the witness whose testimony he was called to impeach had had an opportunity of answering in reference to the subject, the time, place, person, and circumstances to be specified to the witness it is intended to impeach.)

Mr. MERRICK. Then your honor orders the answer to be stricken out?

The COURT replied in the affirmative.

Mr. MERRICK desired an exception to the ruling to be noted.

Mr. BRADLEY called attention to the fact that the witness, John Lee, some days ago, was called to the stand for the purpose of further cross-examination in relation to the contradictory statements made by him which had come to the knowledge of the defence after his testimony was concluded. He now asked that Lee might be recalled for the purpose of putting the proper questions to him in order to lay the ground for his contradiction.

Mr. PIERREPONT resisted the motion. This witness admitted that although he had lived here all his life he had never heard the reputation of John Lee called in question until since his testimony here. It was the right of the witness, as the court had stated, before any question could be asked tending to contradict him, that his attention should have been drawn to the time and place, and an opportunity afforded him to explain the circumstances.

Mr. BRADLEY remarked that when application was made on the former occasion for the recall of Lee, the court decided that was not the proper time to recall him. Circumstances had now arisen making it proper to address a new application to the discretion of the court for his recall, in order to lay the proper foundation for showing that he had made directly contradictory statements. He was ready, in support of his application, to present the affidavits of half a dozen persons stating the contradictions he expected to show.

The COURT announced his decision overruling the motion. He could not see that there was any exercise of discretion in the matter, but, on the contrary, great trouble would arise out of it if granted. If the doors are opened in this instance, they must be thrown wide open in every case. If the witness Lee was to be recalled to lay the foundation for his contradiction, this witness might also be recalled for the same purpose, and he did not see where this case was to end. With such a practice permitted, unless a man was to live a hundred or a thousand years, a case of this magnitude would never be ended.

The COURT stated that he had received a note from James R. Ford, desiring to be recalled for the purpose of explanation, and directed that an opportunity be now afforded for that purpose.

JAMES R. FORD then appeared upon the stand, and made the following statement: I wish to say that I was always a thoroughly loyal man; was always on the side of the government.

By Mr. PIERREPONT:

Q. You refused to state that before, did you not?

A. I did not see what bearing it had on this case.

Q. That was the reason?

A. Yes, sir.

Q. You have always been in sympathy with the North against the South during the war?

A. Yes, sir.

Q. Where have you lived?

A. In Baltimore, and in Washington a part of the time since the war.

Q. You never expressed any sympathy towards the South, but always in favor of the North and against the South?

A. Yes, sir.

Q. But you did not tell it just now.

Mr. BRADLEY said he would like to ask the witness whether he and his brother had not shown their sympathy by the great benefits they had conferred on the United States?

Question objected to by Mr. Pierrepont as not proper. Objection sustained.

DAVID H. BATES recalled as a witness for the defence, and examined.

By Mr. MERRICK:

Q. Have you any telegram addressed to Jacob W. Vanderpool from any authority in Washington?

A. Yes, sir. I have one, but not addressed to Jacob W. Vanderpool.

(Telegram produced and exhibited to counsel on both sides and to the court.)

Mr. PIERREPONT objected to its being received in evidence.

Mr. MERRICK said the court would recollect that Vanderpool testified that

he came here of his own accord, without any suggestion or summons from anybody.

The ASSISTANT DISTRICT ATTORNEY replied that the witness did not state that he came here without suggestion.

Mr. MERRICK read from the testimony of the witness Vanderpool the statement made by him.

Mr. PIERREPONT said that statement was correct, that the witness had not been summoned. More than half a dozen witnesses of whom they had never heard had come on and presented themselves to the district attorney of their own motion, had gone back, and had subsequently been telegraphed for. It was true in respect to them as in respect to this witness, that they came here without summons.

The COURT inquired whether any question had been put to the witness Vanderpool, calling his attention to the district attorney, or assistant district attorney, or anybody else, asking him whether he received any notice from him to go; otherwise he could not be contradicted in this way.

Mr. MERRICK said the question was asked witness whether he came without a summons, and that the answer was, "Without a summons."

The COURT said it seemed that he did come without summons.

Mr. MERRICK replied that he came without subpœna, but not without summons, as the telegram would show.

The COURT said there would be no fairness in contradicting the witness in that way. The word "summons" was a technical word, and the witness, being a lawyer, understood what it meant. The question was not asked him whether he had received any telegram from the district attorney or from anybody. The telegram referred to could not be received in evidence.

Mr. MERRICK desired an exception to the ruling of the court to be noted.

The court then took a recess for half an hour.

AFTERNOON SESSION.

SAMUEL W. OWENS sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?
A. No. 212 Pennsylvania avenue.
Q. How long have you resided in this city?
A. About thirty years.
Q. Do you know a person by the name of John Lee?
A. Yes, sir.
Q. The man of that name who was examined as a witness in this case?
A. I presume he is the same man.
Q. Do you know his general reputation for truth and veracity?
A. I have heard a great many people speak of it.
Mr. PIERREPONT. Before the trial?
Mr. MERRICK. Before the trial or after it, either?
Mr. PIERREPONT. No, sir; only before?
WITNESS. I have heard him spoken of both before and since.
Q. What do people say of him as a man of truth and veracity?
A. I should think from his reputation that he was not a truthful man.
Q. From his general reputation in this respect, would you believe him on his oath?
A. I do not think I would. I think if he was interested in a case, that it would be very doubtful whether he would tell the truth. I should hate to have to take his oath myself.

Cross-examination by Mr. PIERREPONT:

Q. Do you know Mr. Lee?
A. Yes, sir.
Q. Personally?
A. Yes, sir.
Q. The one who testified here?
A. Yes, sir; I presume it is the same man. He was a detective at one time, and also a police magistrate.
Q. In Washington?
A. Yes, sir.
Q. How long has he lived in Washington?
A. When I returned from the army I found Mr. Lee here. I never saw him before that time.
Q. Do you know how long he lived here?
A. No, sir. He was a detective when I first knew him.
Q. When was he a police magistrate?
A. He was a police magistrate two years last June.
Q. Won't you tell the jury who you heard say before this trial that they would not believe him on his oath?
A. No, sir. I could not, because I have heard so many speak of it.
Q. Can you tell one?
A. I do not think I could.
Q. You think that he could tell the truth under oath?
A. He might do so, if he had no object the other way.
Q. Do you tell these gentlemen that you would not believe him testifying here under oath?
A. I certainly would not take his oath.
Q. Do you tell these gentlemen that you would not believe him under oath? That is the question I put. You will please answer that.
A. I shall answer the question to suit myself.
Mr. PIERREPONT. Perhaps you won't. You may have to answer it as the court directs.
WITNESS. That may be, but I shall not do anything that will commit myself.
Mr. PIERREPONT. Certainly not. We do not want you to do anything to commit yourself.
Q. Do you say to the jury that you would not believe him under oath?
A. If I was a juror I would not take his oath.
Q. You say you would not believe him under oath?
A. Yes, sir.
Q. Will you tell us who, before the trial, you have heard say they would not believe him under oath?
A. No, sir; I cannot tell.
Q. You don't know of any one?
A. That is, I could not name any one. I know Mr. Lee; have met him often, and in various companies.
Q. Have you been at all intimate with him?
A. I have met him every day for a year or two, when he was around in the neighborhood where I resided.
Q. You cannot give us the name of a man?
A. No, sir; I cannot.
Mr. MERRICK. I understand you to say, Mr. Owens, that you cannot give the name of any person who spoke thus, but that what you have stated is what was generally said of him?
A. Yes, sir.

Mr. PIERREPONT. But you cannot now tell us the name of one man who said it?

A. No, sir; I do not know that I can.

T. G. CLAYTON sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington, on Massachusetts avenue, between Fourth and Fifth streets.

Q. How long have you resided in this city?

A. At the present time I have resided in the city since 1854.

Q. What is your present occupation?

A. During the winter and this last spring I have been connected with my son in the patent business. Prior to that I had for some time been acting as justice of the peace in the second ward.

Q. For how many years were you justice of the peace?

A. I was appointed on the 14th of February, 1862, by Mr. Lincoln, and continued in that office, with slight intermission when my commission run out, until the present time. I am still in commission.

Q. Do you know a person by the name of John Lee, who was a witness in this case?

A. I do.

Q. Do you know his general character for truth and veracity?

A. I knew Mr. Lee by reputation during the greater part of the time that I was in that ward, which was until 1865, say the 14th of February, when my commission run out. I only knew him by reputation. Perhaps I had seen him, but not to know him. Since that I have known him personally.

Q. Wh at do people generally say of him as a man of truth?

A. I have heard a great many people speak unfavorably of "Jack" or "John Lee," as they familiarly called him, during that period.

Q. What verdict do the people in the neighborhood in which he lives pronounce upon him, as a man of truth and veracity?

A. I have heard a great many say that they would not believe him.

Q. From what you have heard said of him as a man of truth, by those among whom he lived and with whom he associated, would you believe him on oath?

A. If I took the reputation, I should say not.

Cross-examination by Mr. PIERREPONT:

Q. Will you tell us who you have heard say they would not believe him under oath?

A. I do not know whether I could mention individuals, because it was a general thing in my office during the time I was presiding there.

Q. Among those numbers, can you tell us some four or five of them?

A. I might perhaps mention correctly the names, and then again I might make a mistake and mention the names of parties whom I would not wish to implicate, because I never expected such a thing as to be called upon to give their names here.

Q. You see I want to know who they are, and where they live, in order that we may call them if necessary. You would oblige us if you will try and think of some of them.

A. I would not like to risk giving names, because I might make a mistake with regard to some of the names.

Q. Can you give us the name of anybody who said that they would not believe him under oath?

A. The only one person that I remember of, so as to be able to mention his name positively, is Mr. William Magee.

Q. Where does he live?

A. His place of business is on E street.

Q. What is his business?

A. He keeps a restaurant and bowling saloon.

Q. Do you know whether he ever had any difficulty with Lee?

A. I do not know that he had any difficulty with Lee personally.

Q. You did not hear so?

A. No, sir

Q. Is that all?

A. I would not like to be definite, because that is a great difficulty in my mind; I might give you a half dozen names which might be correct, and then again they might not.

By Mr. MERRICK:

Q. I understood you to say, that although you cannot give particular names, yet such was the general talk about him?

A. Yes, sir; such was the talk in my office frequently.

JOSHUA LLOYD sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On Capitol Hill.

Q. State what you have been engaged in during the past five or eight years —since the war.

A. During the war I was on the detective force at the depot under Colonel O'Beirne.

Q. Do you know John Lee, who testified in this case?

A. Yes, sir.

Q. Was he a member of that force?

A. He was.

Q Did John Lee ever say to you at the Kirkwood House, in this city, just after the assassination of the President, that he did not know Surratt, and had never seen him?

Mr. PIERREPONT. I object.

(Objection sustained by the court on the ground that the foundation had not been laid. Exception reserved.)

Q. Do you know John Lee's general character, and what those on the force said of him as to his being a man of truth?

A. Yes, sir.

Q. Tell the jury what these people said about him as to his being a truthful man, or a man who would lie.

A. I do not think there is a man on the force who would believe him on his oath.

Q. From what the men on that force said about him as a man who would tell the truth, or as a man who would lie, would you believe him on his oath?

A. I do not think I would.

Cross-examination by Mr PIERREPONT:

Q. You suppose he could tell the truth, don't you?

A. I suppose he could.

Q. Do you suppose if he were called to speak in a matter in which he had an interest which would lead him to speak falsely, he would be more apt to speak falsely than truly?

A. I think he would.

Q. Then if he should come to you and make you any statement of any facts you would take it for granted it was false?
A. Yes, sir. I have done it.
Q. And always did so, didn't you?
A. Yes, sir; I did.

By the DISTRICT ATTORNEY:

Q. Were you on the same force with Lee?
A. Yes, sir.
Q. How long were you brother officers together?
A. I cannot exactly say—may be a year, may be more.
Q. Did you at that time entertain the opinion that you have expressed here?
A. Well, sir, I caught him in so many falsehoods——
The DISTRICT ATTORNEY. That is not exactly responsive to my question. I asked if you then had the opinion of him that you say you now have, and have expressed here.
A. Yes, sir.
Q. Did you make complaint of him?
A. I did.
Q. To whom?
A. To Colonel O'Beirne.
Q. After you made complaint to Colonel O'Beirne, did he remove him from office?
A. No, sir.
Q. He continued him in his service notwithstanding your complaint?
A. Yes, sir.
Q. Were you a witness before the military commission?
A. Yes, sir.
Q. Was Lee a witness there?
A. I believe he was.
Q. Was Lee employed by the authorities to aid in the investigation of the assassination of the President?
(Objected to by Mr. Merrick as not responsive. Objection overruled, and witness directed to answer.)
A. Yes, sir.
Q I will now ask you if you and he did not act together in this matter. First, were you engaged in searching out the persons who were suspected of assassinating the President?
A. Yes, sir.
Q. Was Lee, at the same time?
A. Yes, sir; but we were in different parts of the country. We were not together at that time. We met at Bryantown, on that search, but had very little conversation.
Q. Has there ever been any difficulty between you and Lee?
A. Never in our lives.
Q. Did Lee ever complain of you to Colonel O'Beirne?
A. He might have.
Q. Did not he charge you with falsehoods?
A. I never heard of it.
Q. Don't you know he did make complaint of you?
A. I never heard of it.

By Mr. PIERREPONT:

Q. Did Lee, notwithstanding this trait you speak of, of never telling the truth when he came to you, prove to be a useful man in the business he was engaged in?

A. Not as I know of. He might have been, but it didn't come under my notice at all.

Q. As a detective, was it not important to bring truthful information, or was false better?

A. Truthful, I suppose.

Q. Truthful information was desirable, was it not?

A. Yes, sir.

Q. But he never gave any, did he?

A. He never gave any to me that I know of.

Re-examination by Mr. MERRICK:

Q Do you say that you reported him to Colonel O'Beirne?

A. Yes, sir.

Q. Was he not removed by Colonel O'Beirne afterwards?

A. Yes, sir.

Q. What was he removed for?

A. Something about a horse in Maryland.

Objected to as not responsive. Objection sustained and answer ruled out.

CHARLES KIMBEL sworn and examined.

By Mr. MERRICK:

Q. Please state where you reside?

A. In Washington.

Q. How long have you lived here?

A. Almost all my life.

Q. What is your occupation?

A. Constable.

Q. How long have you been in that office?

A. Fifteen or twenty years.

Q. Do you know a man by the name of John Lee who testified in this case?

A. I know him.

Q. Do you know what people say of him, as a man who tells the truth or tells a lie?

A. Some people speak pretty hard about him.

Mr. PIERREPONT. I object to this mode of examination.

The COURT. The first question to be put to the witness is whether he has ever heard his character and reputation for truth and veracity discussed among the people who are acquainted with him?

Mr. MERRICK. Very well, your honor, I will put it in that form.

Q. Have you ever heard his character for truth and veracity discussed by the people among whom he lives, or who are acquainted with him?

A. I never paid very particular attention, but I have heard some people speak very hard about him. I never was very intimately acquainted with Mr. Lee until he got the appointment of magistrate.

Mr. MERRICK. I did not ask about your personal acquaintance. I want to know what other people say of him. Suppose him, now, to be a man that you did not know anything about, and whom you had never seen, what did people whom you know say generally of John Lee before this trial?

A. I did not hear him spoken of so frequently before the trial as I have since.

Q. Did you hear him spoken of at all before the trial?

A. I heard some people speak hard about him before the trial.

Q. What did they say about him as to truth and veracity?

Mr. PIERREPONT. What some people said?

The COURT. He must only speak of his general reputation.

Mr. MERRICK. You say you have heard him discussed?

A. I have heard persons speak casually of John Lee.

Q. What was the general opinion thus casually expressed in regard to his being a man of truth, or a man of falsehood?

A. I have heard some people say that he was a damned rascal.

The COURT. You must not speak of what some people say, but state what is the general opinion.

Mr. MERRICK. Mr. Kimbel, we only want to know what was generally said when the question about his truth or falsehood arose.

Mr. PIERREPONT. We do not want that, if your honor please. I submit that your honor has twice ruled upon it.

Mr. MERRICK. If I depart from what your honor has ruled, I do it, sir, through ignorance.

Mr. PIERREPONT. The ruling of the court should be followed.

Mr. MERRICK. I desire to follow it.

The COURT. This witness should be asked if he does know the general reputation that this man bore for truth and veracity.

Mr. PIERREPONT. As yet he has said he does not. That is, so far as he has said anything. He only heard particular persons speak so and so.

Mr. MERRICK. Is it necessary that an entire community should express an opinion? It is enough, as I conceive, for a dozen persons or half a dozen in a community, at different times, casually discussing an individual upon this subject, to pronounce that opinion.

Mr. PIERREPONT. General repute is the law.

Mr. MERRICK. General repute is formed by the general opinion expressed when the subject is discussed. It is scarcely ever the case that a man without taint has his veracity questioned in a community. That being so, when his veracity is questioned in a discussion, the inquiry is to know how far you can rely upon that man's word—what is the verdict pronounced when the matter is discussed.

Mr. PIERREPONT. If your honor please, have not these questions been settled a great many times; and is not the first question acknowledged to be "Whether he knows his general reputation for truth and veracity?"

The COURT. That is the first question, and it is very easy for the witness to answer it, and he must answer it.

Mr. MERRICK. I will so frame the question, your honor.

Q. State if you know what was generally thought of him as a man of truth and veracity.

The DISTRICT ATTORNEY. I object to that. You must ask what was said of him.

Mr. PIERREPONT. Nor has he yet the right to ask what was said of him. He must first be asked if he *knows* what his general reputation is for truth and veracity.

Mr. BRADLEY. The Supreme Court, your honor, three years ago settled the order of the question and the questions. I have not the book in court, but if your honor will indulge me a moment, I will send and get it.

Mr. PIERREPONT. Does this subject require any new discussion. Is it not a well settled matter?

The COURT. It seems to me to be so, but Mr. Bradley thinks some new light has been thrown upon it by a recent decision of the Supreme Court. If that is so, of course we must bow in deference to the authority.

Mr. PIERREPONT. Certainly, if there is any new light.

The DISTRICT ATTORNEY. Your honor will observe that any detective, any executive officer, is very apt to have things said against his character, and there-

fore it is very proper that the question should first be, "What is his general reputation among his neighbors, among those who know him?"

The COURT. I have ruled that the first question to be put is this: "Are you acquainted with the general character or reputation of the witness for truth and veracity in the neighborhood in which he resides, or has resided at any given time, among those who know him?" If that question is answered in the affirmative, the next question is, "What is that general reputation for truth and veracity?" You might proceed, Mr. Merrick, with the examination with the understanding that it is subject to the decision which has been referred to, if it be found to be applicable.

Mr. MERRICK. I will then ask you whether you do or not know his general reputation among the people who know him where he resides, as a man of truth and veracity?

A. Well, sir, when he was first appointed magistrate——

Mr. MERRICK. Never mind about that.

WITNESS. I was going to explain it in that way. I have only heard people speak of him in that way pretty hard.

Mr. MERRICK. The question is, Do you know what his general reputation is? You know what "general reputation" means.

WITNESS. From what I have heard I should not think it was very good.

Q. Do you know it?

A. Only from what other people say.

Mr. PIERREPONT. That isn't an answer.

Mr. MERRICK. Reputation is made up of what other people say.

Mr. PIERREPONT. What people generally say.

WITNESS. I have heard people say he was pretty hard.

Mr. PIERREPONT. Then you don't know his general reputation, as I understand you?

A. I could not answer that I do know it, only from what I have heard other people say.

Mr. MERRICK. That is general reputation. You know what other people say?

A. Yes, sir.

Mr. PIERREPONT. Do you know what they generally say—not what a few say?

A. I have had people's business to attend to, and when I have spoken of carrying it before Lee they would say "No, I would not trust him."

Mr. PIERREPONT. That is not reputation for truth.

The COURT. That will not do.

By Mr. MERRICK:

Q. Have you heard people speak of him as a man of truth or falsehood?

A. I have heard people say that they would not believe him.

Mr. MERRICK. I submit that that will do.

Mr. PIERREPONT. That is not answering the question as to his general reputation. You can find people who will say they would not believe anybody.

Mr. MERRICK. Mr. Bradley, your honor, has just handed me the authority to which he referred. I will read it. It is the case of Teese *et al. vs.* Huntington *et al.*, 23d Howard, p. 10:

"After the defence was closed, the plaintiff offered evidence to impeach one of the witnesses, who had given material testimony for the defendants. When called, the impeaching witness stated that he knew the witness sought to be impeached, and knew other persons who were acquainted with the witness, and that they both resided in the city of Sacramento; whereupon the counsel of the plaintiffs put the question: 'What is the reputation of the witness for moral character?' To that question the counsel of the defendants objected, on the ground that the inquiry should be limited to the general reputation of

the witness for truth and veracity, with the right to put the further inquiry, whether the witness testifying would believe the other on his oath; and the court sustained the objection, and rejected the testimony.

"No reasons were assigned by the court for the ruling, and of course the only point presented is, whether the particular question propounded was properly excluded.

"Courts of justice differ very widely whether the general reputation of the witness for truth and veracity is the true and sole criterion of his credit, or whether the inquiry may not properly be extended to his entire moral character and estimation in society. They also differ as to the right to inquire of the impeaching witness whether he would believe the other on his oath. All agree, however, that the first inquiry must be restricted either to the general reputation of the witness for truth and veracity, or to his general character, and that it cannot be extended to particular facts or transactions, for the reason that, while every man is supposed to be fully prepared to meet those general inquiries, it is not likely he would be equally so without notice to answer as to particular acts.

"According to the views of Mr. Greenleaf, the inquiry in all cases should be restricted to the general reputation of the witness for truth and veracity; and he also expresses the opinion, that the weight of authority in the American courts is against allowing the question to be put to the impeaching witness, whether he would believe the other on his oath. In the last edition of his work on the law of evidence, he refers to several decided cases, which appear to support these positions; and it must be admitted that some of these decisions, as well as others that have since been made to the same effect, are enforced by reasons drawn from the analogies of the law, to which it would be difficult to give any satisfactory answer—1 Greenleaf Ev., sec. 461; Philips *vs.* Kingfield, 19 Me., 375, per Shepley, J.; Goss *vs.* Stimpson, 2 Sum., 610; Wood *vs.* Mann, 2 Sum., 321; Craig *vs.* the State, 5 Ohio, R. S, 605; Gilbert *vs.* Shelden, 13 Barb., 623; Jackson *vs.* Lewis, 13 Johns. R., 504; United States *vs.* Van Sickle, 2 McLean, 219; State *vs.* Bruce, 24 Me., 72; Com, *vs.* Morse, 3 Pick, 196; Gilchrist *vs.* McKee, 4 Watts, 380; State *vs.* Smith, 7 Vt. R., 141; Frye *vs.* Bank of Illinois, 11 Ill. R., 367; Jones *vs.* the State, 13 Texas. R, 168; State *vs.* Randolph, 24 Conn. R., 363; Uhl *vs.* Com, 6 Gratt, 706; Wike *vs.* Lightner, 11 S. and R., 388; Kemmel *vs.* Kemmel, 3 S. and R., 338; State *vs* Howard, 9 N. H., 485; Buckner *vs.* the State, 20 Ohio 18; Ford *vs.* Ford, 7 Humphr., 92; Thurman *vs.* Virgin, 18 B. Monroe, 792; Perkins *vs.* Nobly, 4 Ohio, R. S., 668; Bates *vs.* Barber, 4 Cush., 107.

"On the other hand, a recent English writer on the law of evidence, of great repute, maintains that the inquiry in such cases properly involves the entire moral character of the witness whose credit is thus impeached, and his estimation in society; and that the opinion of the impeaching witness, as to whether he is entitled to be believed on his oath, is also admissible to the jury—2 Taylor Ev., secs., 1082, 1083.

"That learned writer insists that the regular mode of examining into the character of the witness sought to be impeached, is to ask the witness testifying whether he knows his general reputation; and if so, what that reputation is and, whether, from such knowledge, he would believe him upon his oath. In support of this mode of conducting the examination, he refers to several decided cases, both English and American, which appear to sustain the views of the writer—Rees *vs.* Watson, 32 How. St. Tr., 496; Manson *vs.* Hartsink, 1 Esp. R., 104; Rex *vs.* Rockwood, 13 How. St. Tr., 211; Carpenter *vs* Wall, 11 Ad. and El., 803; Anonymous, 1 Hill (S. C,) 259; Hume *vs.* Scott, 3 A. K. Marshall, 262; Day *vs.* the State, 13 Mess., 422; 3 Am. Law Jour., N. S., 145."

The COURT. The view of Mr. Taylor coincides precisely with the one I entertain, and which I shall continue to entertain, unless I am required to

modify it by the decisions of the Supreme Court. When an effort is being made to attack the credibility of a witness, the first question to be put to the party on the stand, who is being examined with this view, is as to his knowledge of the general reputation for truth and veracity of the witness whose testimony it is sought to impeach. If this question be answered in the affirmative, then he is allowed to state what that general reputation is. It must be, however, general reputation, not the reputation as derived from a few individuals, for there is no man in this land of whom the tongue of defamation has not spoken. Even Washington and Lincoln have not been exempt from such. Some, there were no doubt, who would have declared they would not believe them on their oath. I have heard things said of Henry Clay and Daniel Webster, which could not have had any foundation in truth, and were prompted, perhaps, by some personal feeling.

Mr. MERRICK. Your honor's remarks on that subject are undoubtedly very just.

The COURT. What some people say will not do, but the general reputation, the preponderating weight of reputation that is given to the individual among the people who know him, is required.

Mr. MERRICK. Taylor's view, however, your honor, is somewhat different, if I do not misunderstand it, in this respect: he allows reputation for character generally. He does not restrict it to truth and veracity.

The COURT. I understood it as being reputation for truth and veracity. I know the English rule is different from ours in that particular.

Mr. MERRICK. Yes, sir; that is true. Our courts are, however, progressing very rapidly in the direction of the English rules of evidence.

Mr. MERRICK then continued reading from the same authority, as follows:

"Both Mr. Greenleaf and Mr. Taylor agree, however, that the impeaching witness must be able to state what is generally said of the other witness by those among whom he resides, and with whom he is chiefly conversant, and in effect admit that unless he can so speak he is not qualified to testify upon the subject, for the reason that it is only what is generally said of the witness by his neighbors that constitutes his general reputation. To that extent they concur, and so, as a general remark, do the authorities which, on the one side and the other, support these respective theories, but beyond that the views of these commentators, as well as the authorities, appear to be irreconcilable.

"In referring to this conflict of opinion among text writers and judicial decisions, we have not done so because there is anything presented in this record that makes it necessary to choose between them, or even renders it proper that we should attempt at the present time to lay down any general rule upon the subject. On the contrary, our main purpose in doing so is to bring the particular question exhibited in the bill of exceptions to the test of both theories in order to ascertain whether under either rule of practice it ought to have been allowed. Under the first mode of conducting the examination it is admitted that it was properly rejected, and we think it was equally improper, supposing the other rule of practice to be correct. Whenever a witness is called to impeach the credit of another, he must know what is generally said of the witness whose credit is impeached by those among whom the last-named witness resides, in order that he may be able to answer the inquiry either as to his general character in the broader sense, or as to his general reputation for truth and veracity. He is not required to speak from his own knowledge of the acts and transactions from which the character or reputation of the witness has been derived, nor, indeed, is he allowed to do so, but he must speak from his own knowledge of what is generally said of him by those among whom he resides, and with whom he is chiefly conversant, and any question that does not call for such knowledge is an improper one and ought to be rejected. No case has been cited authorizing such a question, or even furnishing an example where it was put, and our researches in that direction have not been attended with any better success. For these

reasons we think the question was properly excluded. Some further attempts were made by the plaintiffs to impeach this witness, and with that view they called another witness, who testified that he knew the one sought to be impeached, and had had business transactions with him during the years 1852–'53, in the city where they resided. On being asked by the counsel of the plaintiffs what was the reputation of the witness for truth and veracity, he replied that he had no means of knowing what it was, not having had any dealings with him since those transactions: thereupon the same counsel repeated the question, limiting it to that period."

Objection was made to that question by the counsel of the defendants on the ground that the period named in the question was too remote, and the court sustained the objection and excluded the question. To this ruling the plaintiff excepted. Such testimony undoubtedly may properly be excluded by the court when it applies to a period of time so remote from the transaction involved in the controversy as thereby to become entirely unsatisfactory and immaterial; and as the law cannot fix that period of limitation, it must necessarily be left to the discretion of the court. Considering that the witness had already stated that he was not able to answer the question, we do not think that the discretion of the court, in this case, was unreasonably exercised. None of the exceptions can be sustained, and the judgment of the circuit court is therefore affirmed with costs."

Mr. PIERREPONT. We all agree then on the law.

Mr. MERRICK. I do not know as we differ as regards terms. I find, however, this opinion goes further than the Supreme Court goes. It evidently indicates that the judges are inclined to adopt the English rule and allow the inquiry to be as to the party's general character. I had not supposed that this decision went as far as that.

THE COURT. Proceed with the examination.

By Mr. MERRICK:

Q. Can you state whether or not you know what is generally said of him as a man of truth and veracity?

A. I heard but very few persons speak of him before this trial.

Mr. PIERREPONT. That ends it.

Mr. MERRICK. I now propose to ask the witness this question, "If he knows what is generally said of him since this trial?"

Mr. PIERREPONT. I object to that.

The COURT. I will state that while I preside here I do not intend to allow any man's character to be damned or sanctified simply by the rumors or the talk which may have been occasioned by testimony which he may have given in a particular case. It will not do thus to tear down the barriers of justice, for then no truth or justice will be reached in any case. That is my opinion, and I shall entertain it until I am overruled by some paramount authority.

Mr. Merrick reserved an exception.

Mr. MERRICK. I now propose to ask the witness this question: Did John Lee say to you in the office of Edgar Bates in this city, within a year past, and before Surratt was brought here, that he did not know Surratt, and had never seen him?

Mr. PIERREPONT. I object.

Objection sustained because of no foundation having been laid. Exception reserved.

FREDERICK CALVERT sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. No. 115 Pennsylvania avenue.

Q. How long have you lived in the city?
A. All my life.
Q. Where are you now employed?
A. In the War Department.
Q. What branch?
A. Adjutant General's office.
Q. How were you engaged during the war?
A. In the forepart of the war I was in the service; after leaving the service I was employed as quartermaster for the engineers' department at Fort Ethan Allen.
Q. Do you know a man by the name of John Lee who testified in this case?
A. I do.
Q. Was Mr. Lee employed under Colonel O'Beirne?
A. Yes, sir.
Q. Were you also thus employed?
A. I was
Q. State, if you please, whether you know what his general reputation among the men with whom he associated was, as regards being a man of truth or being a man of falsehood.
A. Yes, sir; I do.
Q. Will you be so kind as to state what that general reputation was?
A. He seemed to be doubted in almost everything he did up there. His general reputation among the men was bad.
Q. From what you know of his reputation would you believe him on his oath?
(Objected to by Mr. Carrington. Objection overruled.)
Mr. MERRICK. I will repeat the question.
Q. State, if you please, whether or not from what you know of his general reputation, from what people say, you would believe him on his oath.
A. No, sir; not if my life was at stake.

Cross-examination by Mr. PIERREPONT:

Q. You would not believe any man who was trying to take away your life on his oath, would you?
A. A man of better reputation than his I would.
Q. When trying to take away your life?
A. Yes, sir. I do not object to any man telling the truth.
Q. Do you know the Secretary of War?
A. I am not personally acquainted with him.
Q. Did Lee know him by sight?
A. I cannot say. I suppose he did.
Q. Name some officer in Washington whom he did know by sight.
A. He knew Colonel O'Beirne.
Q. If you had gone over to Colonel O'Beirne's office to see him, and while looking for him with some earnest message, Mr. Lee had come in and told you he had just seen him going into the President's house, would you have believed him?
A. That would depend altogether upon circumstances.
Q. Under just the circumstances I am narrating?
A. If I were tried with a case I might be able to decide. I cannot now say whether I would or not.
Mr. PIERREPONT. I will again ask you this question: If you were going over to Colonel O'Beirne's office to deliver a message, and in your earnest pursuit of the colonel to deliver it immediately, you were to make inquiry of Mr.

Lee, and he should say, I just passed the President's house and saw him go in there, would you believe it?

A. If I could not satisfy myself otherwise I might believe it.

Q. Would you go to the President's house to see?

A. If I could not find him anywhere else.

Q. Would you go somewhere else first or there first?

A. I cannot answer that clearly. If I thought the man was about the building, I might look all over the building first.

Q. I repeat, suppose, while you were thus earnestly seeking Colonel O'Beirne, Mr. Lee should say to you that he had just seen him go into the President's house, would you go there to see him?

A. Certainly, if he was not about the office.

Q. Then you would believe what he said?

A. Of course in that case I would.

By the DISTRICT ATTORNEY:

Q. You have expressed the opinion that you would not believe Mr. Lee on oath. Is your opinion of him such that you would not believe his sworn statement in a matter where he had not the least interest in misrepresenting the truth?

A. Not if I thought there was prejudice.

Q. Suppose there was no prejudice?

A. It is hard for me to state.

Q. Do you believe, sir, from your opinion of Mr. Lee, since you have given your opinion——

Mr. MERRICK. He has given the general opinion.

The DISTRICT ATTORNEY. Very well, then; from that do you believe that he is such a hardened villain that he would come into this court and swear to what he knew to be untrue for the purpose of taking away the life of a man who had never harmed him, and against whom he could have no prejudice whatever?

Objected to by Mr. Merrick; objection overruled.

The DISTRICT ATTORNEY. Do you state that you would not believe him when testifying here under such circumstances, and when he could have no possible prejudice against the man?

A. I would not, from general reputation.

Q. Suppose that, under the circumstances I have supposed, he should swear to one fact in which he is confirmed by twelve other witnesses, do you say that from general reputation you would not believe him on oath?

Mr. MERRICK. I object.

The COURT. That is another question, Mr. Carrington.

Mr. MERRICK. Mr. Carrington thinks he has got to the jury.

The COURT. The question is, whether he would believe this man, not whether he would believe other men. The question is therefore ruled out.

The DISTRICT ATTORNEY. I will ask you, since you have expressed yourself so strongly, this question: How often have you heard his reputation for truth and veracity discussed?

A. While the draft was going on I heard his reputation discussed nearly every day.

Q. By whom?

A. I could not name the particular parties, but by the men who belonged to the force.

Q. Can you name any of them?

A. I have heard him talked of by Lloyd, I think.

Q. The same one who was a witness here?

A. I do not know who was a witness here.

Q. You mean Joshua Lloyd?

A. Yes, sir.

Q. Who else?
A. Garrison.
Q. Who else?
A. I cannot name all of them, for I have not given this matter the least possible thought since the breaking up of the office.
The DISTRICT ATTORNEY. I should judge, from the opinion you have expressed, that you must have given it a great deal of attention.
Q. Go on and state, if you please, any others whom you recollect.
A. I think Michael O'Callahan was one.
Q. Who else?
A. Those are all I can remember now.
Q. How often have you heard those three speak of his reputation for truth?
A. I could not say how often, positively.
Q. Give me some idea, for it is a serious matter.
A. I have heard them on several occasions.
Q. What do you mean by several occasions?
A. Probably a half-dozen different times.
Q. Not more than a half-dozen times?
A. Might have been more.
Q. Where was it?
A. At the office of the provost marshal.
Q. Anywhere else?
A. No, sir; I never had any business anywhere else, and never came in contact with them on any other occasion.
Q. Can you state exactly what they said?
A. No, sir.
Q. Then you have heard him discussed by these three men on six different occasions, though you cannot recollect what they said; and upon that evidence you base the opinion which you have expressed to the jury?
Mr. MERRICK. That is not what the witness stated.
The COURT. I understood the witness to say that he had heard a number of persons speak of him, but the three he mentioned were all that he could name.
Mr. MERRICK. That is what he stated, sir.

By the DISTRICT ATTORNEY:

Q. Can you state the substance of what these men whom you heard discussing his character said?
A. No, sir; I cannot, positively.
Q. Then I understand you to say that you are not able to state what they said in reference to this man's reputation for truth and veracity; and yet you express the opinion you have to the jury?
A. Yes, sir.
Q. How long was this man in the service at the provost marshals?
A. I do not know the date when Colonel O'Beirne came there; but he came to the office shortly after Colonel O'Beirne took charge, and was there until the office broke up.
Q. How long were you in the service?
A. I went there under Colonel Putnam, and just prior to Colonel O'Bierne's coming there.
Q. Have you had any difficulty with Lee?
A. I have not.
Q. Did these parties whom you have mentioned have any difficulty with him?
A. Not that I am aware of.
Q. Didn't you know of his making complaint of them?
A. Not of those I have mentioned.

Q. Did you never hear their characters questioned, as also that of every detective there?

Mr. MERRICK. I object.

The DISTRICT ATTORNEY. Can I not put this question on cross-examination?

The COURT. There is a proper way for you to impeach the character of these witnesses.

The DISTRICT ATTORNEY. Unquestionably, your honor; but this witness having referred to persons whom he heard speak of the witness whom he is called to impeach, I am seeking to bring out all that was said. I will ask the witness this question: At that time, when you heard these witnesses speak of Lee, didn't you hear by some of them something said derogatory to the character of the other.

Mr. MERRICK. I object to that.

The COURT. You have a right to all that was said touching the character of Lee, the witness.

The DISTRICT ATTORNEY. Suppose this was a general conversation in which these men were quarrelling and contending with each other.

The COURT. You may inquire whether it was a case of crimination and recrimination.

Q. At the time you heard these men speak of Lee, were they not contending with each other; were they not complaining of some official act of Lee's, and were there not criminations and recriminations between the parties?

A. Not that I can remember.

Q. You know Joshua Lloyd, don't you?

A. Yes, sir.

Q. Was there no contest between him and Lee at that time, and spoken of at that time, between the parties?

A. Not in my hearing, or that I know of.

Q. I do not think you have told me how long Lee was kept in the service?

A. I do not know whether he went there immediately upon Colonel O'Beirne's taking charge of the office, or a little after.

Q. Was it a year, or six months, or two years?

A. It was between six months and a year, I guess; I could not state positively.

Q. Was he not connected with the service after the assassination of the President?

A. He was.

Q. Did not he aid in gathering evidence against the alleged conspirators?

A. He did.

Q. Did you co-operate with him at that time?

A. I was on duty at the Kirkwood house taking evidence of parties who were arrested and brought there. I wrote the statements down; and among others his. Colonel O'Bierne was on duty at the Kirkwood house, and his whole force was ordered to report there.

Q. Lee was at the Kirkwood house?

A. Yes, sir.

Q. In what capacity were you employed at that time?

A. As clerk. I was taking down the statements.

Q. What was Lee doing?

A. He was there as a detective; and he was ordered by Colonel O'Beirne to come into the room where I was and make a statement.

Q. Did you take the statement he gave you?

A. I did.

Q. Did you act upon his information?

(No response.)

Q. Did you question the integrity of the statements he made to you?

A. I had no right to.
Q. Did you doubt the integrity of the statements he then gave you?
A. I cannot say.
Q. You can state whether you did or not.
A. I cannot state that I doubted the statement he made at all.
Q. Didn't you find the information he gave you to be correct?
A. Only from what I saw in the newspapers afterwards.
Q. Did you make a personal examination to see whether the returns which he made to you were correct or not?
A. I did not.

By Mr. BRADLEY:

Q. Do you know the prisoner?
A. No, sir; I never saw him until I came into court.

By Mr. PIERREPONT:

Q. How came you to come here as a witness?
A. I received a summons at my office to-day.
Q. Was that the first you heard of it?
A. Yes, sir.
Q. You never spoke about what you could tell to anybody?
A. No, sir.
Q. And had never written it to anybody?
A. No, sir.

Colonel JAMES R. O'BEIRNE, sworn and examined:

By Mr. MERRICK:

Q. Where do you reside?
A. In Washington.
Q. What position do you at present hold?
A. I am register of wills.
Q. In what were you engaged during the war?
A. I was an officer in the army.
Q. Until what time?
A. Until January 1865.
Q. I believe you now hold the commission of brigadier general?
A. I have been brevetted; at least I have been so informed, but the official notice has not yet reached me.
Q. Were you provost marshal here?
A. Yes, sir; I was provost marshal of the District of Columbia.
Q. State whether or not you had charge of the enrollment here?
A. Yes, sir.
Q. At what time?
A. I think it was from January, 1865, or about six months afterwards, I will not be positive as to dates.
Q. Do you know John Lee who testified in this case?
A. Yes, sir.
Q. Was he under your command at any time?
A. Yes, sir; he was my chief detective.
Q. From what time?
A. From the time I took charge of the office until some few months previous to my closing it up.
Q. Were you engaged in endeavoring to discover the assassins of the President?
A. Yes, sir. I was authorized and directed by Mr. Stanton to employ myself and my detective force in the pursuit of the assassins.

Q. State whether or not you discharged John Lee from the service?
(Objected to by the District Attorney. Objection sustained.)
Q. When did he leave your service?
A. I do not remember the date exactly; it was some few months prior to my closing up the office.
Q. Did he resign?
(Objected to by the District Attorney. Objection overruled.)
A. He was discharged from the service of the government by me.
Q. For what?
(Objected to by Mr. Pierrepont. Objection sustained.)
Q. Do you know what his reputation was for truth and veracity among those with whom he associated?
A. Yes, sir.
Q. Will you state what that reputation was?
A. It was bad.

No cross-examination.

SAMUEL K. BROWN, sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?
A. In Washington.
Q. What part?
A. Corner of Twentieth street and Pennsylvania avenue.
Q. Were you connected with Colonel O'Bierne's command?
A. Yes, sir.
Q. In what position?
A. As deputy.
Q. How long were you connected with that command?
A. I was connected with the office for upwards of two years, under Captains Sheetz, and Putnam, and Colonel O'Bierne.
Q. Do you know John Lee who has testified in this case?
A. Yes, sir.
Q. Was he connected with that company?
A. Yes, sir.
Q. Do you know what his general reputation for truth and veracity was among the men with whom he associated?
A. Yes, sir.
Q. Was it good or bad?
A. Bad.
Q. Would you, from what you know of his general reputation for truth and veracity, believe him on his oath?
A. With many grains of allowance.

No cross-examination.

Mr. MERRICK. We now offer in evidence the record of the trial and conviction, in this court, of the witness Cleaver.

The DISTRICT ATTORNEY. We object to the testimony. As I understand the rule, such evidence can be introduced only where a person has been convicted of an infamous crime, and sentence been passed upon him. If the party has merely been tried and convicted, these facts are not admissible in evidence against him for any purpose, especially when a new trial has been granted. All that can be done is, upon cross-examination, to ask the witness whether he has been tried for a certain offence, which question being collateral, if he answers, they are bound by his answer. That question he is privileged, under the instruction of the court, to answer, or to decline to answer, as he may see proper, if the court sees that it may tend to degrade him. For what purpose should

they be allowed to give in evidence a record showing that a party has been tried for an offence, but never been sentenced. He stands just as any other party. The most innocent man may be indicted; the most innocent man may be tried. He is not a guilty man, in legal contemplation, until the sentence of the court has been pronounced upon him. If the object is to affect his competency before the jury, I submit that the only way in which that can be done is upon cross-examination.

Mr. MERRICK. I will state that we do not offer it for the purpose of affecting his competency; but his credibility.

Mr. PIERREPONT. I merely desire to observe that the only object in producing a record of this kind is to prevent a witness testifying. It can have no such effect in this case, as the witness has already given in his testimony. Had it, however, been produced when he was first put on the stand, it would not have prevented him testifying, as it shows on its face that the verdict rendered has been reversed. It cannot be introduced for the purpose of showing that he was not of a good character, because he was fully questioned on that subject.

Mr. MERRICK. I shall offer the indictment and record of conviction, and then the gentlemen may rebut it by whatever else the record may show.

Mr. PIEREPONT. You cannot offer part of a record; and the point we make is that it cannot be offered at all.

Mr. MERRICK said he was aware of that. He then stated that he should have to ask the indulgence of the court to adjourn at this point, as his colleague, Mr. Bradley, senior, was suffering from severe indisposition, and it was desirous that the defence should not be deprived of its right arm at this time.

Mr. Carrington stated that it was not the purpose of the prosecution to press the trial if counsel on the other side was sick.

The court concurred in the propriety of suspending for a day, as Mr. Bradley appeared to be suffering from indisposition, and therefore, at 2.25 p. m., ordered a recess until to-morrow morning, at 10 o'clock.

WEDNESDAY, *July* 10, 1867.

The Court met at 10 o'clock a. m.

THOMAS J. RAYBOLD, residence Baltimore, sworn and examined.

By Mr. BRADLEY:

Q. In the month of April, 1865, were you in any manner connected with Ford's theatre, in the city of Washington?

A. I was.

Q. Were you there on the 14th of April, the day of the assassination of the President?

A. I was there on that day.

Q. What was your connection, what position in that theatre?

A. I had charge of the front of the house, and of the out-door business of the house. I bought all the materials and ordered all the repairs to be done.

Q. Was it also a part of your duty to fit up the boxes when required for any special occasion?

A. I always did it myself or had it done.

Q. Do you remember on that day at what time you received notice of the President's intended visit that night?

A. Yes, sir; very distinctly. It was in the morning, about 10 o'clock. I was in the act of giving a ticket to the messenger myself when Mr. J. R. Ford came into the theatre and gave him the ticket.

Q. State, if you please, whether there was a rehearsal that day?

A. There was.

Q. Do you know at what time it commenced, and how long it continued?

A. I think it commenced about 11 o'clock. That was the hour of the call of rehearsal. I think it was 11, or a few minutes before. I went to

the Star office to put in an advertisement for the coming of the President, General Grant and party that night.

Q. How long were you absent?

A. About 15 minutes—just time to walk to the Star office and back. I returned right back to the theatre. It was my duty to be there.

Q. Was the rehearsal going on when you returned.

A. It had just commenced when I returned.

Q. State, if you please, whether the doors leading from the vestibule into the theatre were opened or closed.

A. There was one door leading from the vestibule into the theatre which was used. That door was locked. I opened the doors commonly in the morning. On this morning a colored woman got the key from Mr. Gifford, to clean the place up.

Mr. PIERREPONT. Did she get the keys from you?

A. No, sir.

Mr. PIERREPONT. Then you need not tell what she got from Mr. Gifford.

By Mr. BRADLEY:

Q. Go on to state if you got the keys?

A. I locked the door when she was done cleaning. It was about nine o'clock; when I opened the office and placed the key in the money drawer in the office. It remained there. No one else was in the office but myself until I went to the *Star* office and returned. About half an hour after that, Mr. Lutz, Laura Keene's husband, came there to go into the rehearsal. Generally——

Mr. PIERREPONT. You need not state what was done generally.

WITNESS. Mr. Lutz came to go into the theatre. I took the key and unlocked the door, and let him pass in, and locked it, and returned to the office with the key. The door was open two or three minutes' time for him to pass in. I put the key back in the office. I stood in the door with the key in my hand, for some time, talking with a gentleman who was with me, and afterwards put the key back in the office.

Q. Now, what other access was there to the auditorium of the theatre except through that door?

A. None, except from the stage. There is another door coming in on to the stage. I perhaps ought to say there are four doors entering the auditorium; but the other doors are locked on the inside, and there is no way of opening them from the outside at all. They are very large doors and are not very handy to open or close. They have no handles nor anything to open them with except just the lock.

Q. You say you had charge of the front part of the theatre; explain what you mean by the front part?

A. The auditorium—all except the stage. I had nothing to do with that, unless there was something wanted to be fitted up for use on it.

Q. Then, the private boxes, as I understand, were under your charge?

A. They were.

Q. Do you know anything about the locks being out of order on the doors of the two boxes, numbers 7 and 8?

A. Yes, sir; I do; and also of 4 and 6.

Q. State to the jury what you know upon the subject of these locks—how you know they were out of order, and how they were out of order?

A. It was some time in the month of March, I think—it was during Mrs. Bowers's engagement—some few weeks before the President's assassination, Mr. Merrick, at the National Hotel, while I was at dinner, asked me to secure him seats at the theatre, which I did. He failed to come until after the curtain fell at the end of the first act, when it is the general custom of the theatre——

Mr. PIERREPONT. You need not state any general custom.

WITNESS. I do not know how I can get at it without making this explanation.

Mr. PIERREPONT. If you cannot get at it in a legal way you cannot get at it at all.

The COURT said the witness might explain how he came to know of these locks being out of order.

WITNESS. Well, sir, I went to box 8 to let him into it. It was locked. The usher had the key and was out of the theatre. I put my back against the door and my foot against the wall and burst the keeper off the lock, so that Mr. Merrick and his company walked in.

Q. Now, about the lock to 7?

A. The lock to 7 had been broken off for some time.

Q. Can you state whether the screws to the lock to 7 had been forced off or unscrewed?

A. The lock had been forced.

Q. State your reasons for that belief?

A. Because the screws could be pushed backwards and forwards, and would not hold in the wood-work.

Q. State if that was out of order sometime before the 14th of April.

A. Yes, sir.

Q. Do you recollect whether you were out in front of the theatre that night, at any time?

A. O, yes; several times.

Q. Between the second and third acts, or during the first scene of the third act, do you remember being out or not?

A. No, sir; I was not. I was in the office, at the window, selling tickets.

Q. Do you know anything, of your own knowledge, of placing a rocking-chair in the box occupied by the President that night?

A. I ordered a black man we had at the theatre to go to a room and get the rocking-chair and put it into the box. It was my custom to do that.

Mr. PIERREPONT. Please do not tell us about your custom.

WITNESS. Well, I did that, that day.

Q. Do you know where it was placed?

A. I cannot say that he placed it there. I did not follow him up. It was put there I know, for I saw it myself. In the position where the chair was placed the box is very narrow. It was in what is known as box seven, when the partition is there. The partition being taken out between boxes seven and eight makes what is termed the President's box. When the partition was out, behind the door of seven we always placed this chair, because the rockers were very long and the box was very narrow, and there was no other place for it in the box. There was a sofa in the box and a small arm-chair, a rocking-chair, and from four to six cane-seat chairs. That is the reason it was placed behind that door rather than in the recess.

Q. When did you first examine the condition of that box, after the assassination?

A. After I had been on the stand, in the trial.

Q. You did not examine it the next day, or within a few days?

A. No, sir. I was sent there by the court or commission, in company with other gentlemen.

Q. Have you ever seen the prisoner at the bar before?

A. Not to my knowledge.

Q. I understand there was an outer door leading to the small passage into the box, that there were two doors opening from that into boxes seven and eight; how was that outer door fastened?

A. It never had any lock on it.

Q. Do you remember whether it had any latch, or anything like a catch?

A. It had no latch.

Q. Nor any spring, or anything of that sort?

A. No, sir; it was a plain door, hung upon hinges.

Cross-examined by Mr. PIERREPONT:

Q. You think the fastenings to that lock could not have been unscrewed?

A. I know it was not unscrewed.

Q. Do you think a bar was fitted in to fasten the door, or do you think that was not done?

A. How do you speak of being fitted in?

Q. To fasten the door. I refer to the bar said to have been fitted in to secure the door to prevent any one from entering the box. Do you think that was done?

A. I cannot say. I never saw the bar. I saw the hole in the wall when I was sent there by the court.

Q. Did you look at the lock then?

A. I looked at the lock. I was sent there for that purpose.

Q. How did you find the screws then?

A. In the keeper, hanging to the door.

Q. And you think they had not been unscrewed, or any preparation made?

A. No, sir.

Q. The bar you did not see. You saw the rehearsal commence, at what hour did you say?

A. At eleven o'clock, as near as I can tell.

Q. Then it did not commence at ten?

A. No, sir.

Q. You are pretty sure of that?

A. I am not sure of anything, positively.

Q. Let us see how sure you are. We have some evidence on which you are sure. (Remark of counsel objected to by Mr. Bradley as improper.) Did not this rehearsal commence on this day at ten o'clock?

A. No, sir.

Q. You are sure about that?

A. I am sure, for Mr. Phillips was sitting in the office.

Q. You need not give your reasons.

Mr. BRADLEY said the witness had the right to make the explanation.

The court decided it was not proper for the witness to give reasons unless he required some explanation.

Q. Now what time did you go into the theatre that morning?

A. Between eight and nine o'clock.

Q. What did you do when you came in?

A. Went to the office, dusted it out, as I generally do.

Q. I don't know what you generally did, I am talking of what you did that morning.

A. That was my work to do.

Q. Do you remember having done it?

A. Yes, sir.

Q. When was your attention first called to these things you have been testifying about?

A. What particular things?

Q. Any of them. When was your attention first called to any of the things you have been testifying about this morning?

A. At the military commission, and prior to that before Judge Burnett.

Q. Did you testify to these things at that court.

A. Yes, sir; I think so.

Q. Did you testify at that court that the rehearsal commenced at ten o'clock?

A. No, sir; I was not asked. I said it commenced about eleven o'clock.

Q. You are quite sure you cannot be mistaken, that it commenced about eleven o'clock?

A. Yes, sir.

Q. Did you ever state that before?

A. No, sir.

Q. Did you ever state before, at what time it did commence?

A. No, sir; I never was asked the question.

Q. Where were you at ten o'clock?

A. I could not tell where I was. In the theatre.

Q. Where were you at eleven o'clock?

A. In the office.

Q. You remember that?

A. Yes, sir.

Q. You saw the rehearsal commence?

A. I cannot positively say I saw it commence. I think it had not commenced when I went to the Star office.

Q. Did you see it commence or not?

A. Not particularly.

Q. I am not asking you "particularly," I am asking you for the fact.

A. I saw the rehearsal going on. I cannot say I saw it commence.

Q. When did you see it going on?

A. When I returned from the Star office, at eleven o'clock, or fifteen minutes after eleven.

Q. What was the rehearsal?

A. The rehearsal was "The American Cousin."

Q. How long did it take?

A. About two hours, I think that rehearsal took.

Q. Do you know?

A. Yes, sir; I know generally.

Q. Do you not know it did not take but exactly one hour and a half?

A. No, sir; I do not know anything of the kind.

Q. Do you know that it took more than that?

A. I do not know that, because I did not time it.

Q. When did you go out of the theatre?

A. About four o'clock in the afternoon, to my dinner.

Q. Was that the first time you went out of the theatre?

A. Yes, sir; I was in there all the time. I was sick; I had the neuralgia in the back of my head.

Q. Where were you when you were sick with the neuralgia in the head?

A. In the office, there at the theatre, attending to my business.

Q. You did not have the arrangement of the rehearsal, and you had no part of that?

A. No, sir; I am not an actor.

Q. You had nothing to do about the machinery of the stage, or play in any way?

A. No, sir.

Q. You staid in the office in consequence of your being sick?

A. No, sir; I did not; that was my place to stay. I did not stay in consequence of being sick at all; if you call it sickness. I had the neuralgia in my head.

Q. I did not call it anything. You termed it sickness, did not you?

A. Yes, sir; I believe I did.

Q. Will you tell us whether you looked on to the stage that day?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir; several times.

Q. Did you look on the stage while the rehearsal was going on?
A. Yes, sir.
Q. Did you look on it before it began?
A. Yes, sir.
Q. Did you look on it after it was over?
A. Yes, sir; I was on it after rehearsal.
Q. And you know how it looked, well?
A. Yes, sir.
Q. Now, taking that desk for the stage, (illustrating by the desks of the court and clerk,) and that for the rear, will you tell us what was in the rear of the stage?
A. A big door back to the alley.
Q. While the rehearsal was going on?
A. Yes, sir; a big door.
Q. Nothing else?
A. Yes, sir; the scenery that required to be changed, and the scenes brought forward, with room enough between each for persons to pass between them, leaving a space perhaps, of six feet between.
Q. Did they not slide close together?
A. Not close together.
Q. When the rehearsal ceased, what then?
A. They were pushed back in their place, and remained until the play commenced.
Q. Some of these scenes were shifted several times, were they not?
A. They were slipped backwards and forwards in their grooves several times, not shifted.
Q. What were the scenes made of?
A. Canvas.
Q. Painted on cloth?
A. Yes, painted.
Q. What had they on them?
A. That would rather puzzle me to describe. There were general scenes, chambers, for instance, which were used not only for the American Cousin, but for various plays.
Q. They were paintings of some sort?
A. Yes, sir.
Q. And they were moved according to necessity?
A. They were.
Q. Did you see them moved that day?
A. I cannot say I did.
Q. You do not know how often they were moved that day?
A. No, sir; I could not tell. I could tell you by looking at the book.
Q. I am not speaking of the book. I am asking you for your knowledge?
A. I do not know.
Q. Will you tell us how near to the front of the stage, the front of these scenes were brought, or slid together?
A. From the footlights, close in front of the stage, I judge the first scene to be about twenty feet from the centre. I am not positive.
Q. Now, will you tell the jury, how many doors that theatre had in front?
A. Do you mean entrances to the lobby, or auditorium?
Q. I mean entrances to any part of the main building, or auditorium?
A. There were three.
Q. To go in and out?
A. No, sir.
Q. I mean to go in and out at?
A. There was one.

Q. Did they all go in and out, at that door?
A. Yes, sir.
Q. Entirely at that door?
A. Yes, sir; they went out there while the play was going on. After the play was over, they went out and in at four doors—if there was any coming in.
Q. I ask you again how many doors there were entering into that auditorium?
A. There were four doors; but only one used for ordinary purposes.
Q. You say there were four doors in front. Now tell how many side doors to enter upon the stage.
A. One.
Q. Where is that?
A. In a long alley, about sixty feet from Tenth street, where it enters the building and leads to the stage.
Q. That alley is on which side?
A. Towards Pennsylvania avenue.
Q. The same alley is there now?
A. I do not know; I have not been there recently.
Q. You enter that alley and come in at the side of the stage?
A. Yes, sir.
Q. When you go further is there any door?
A. No, sir.
Q. Is there any in the rear?
A. Yes, sir.
Q. How many?
A. One small door and one large one which opens the whole back of the theatre.
Q. Did you remove the partition in the box, or help remove it, that day?
A. No, sir.
Q. Did you see it done?
A. No, sir; I ordered it to be done. I did not see it done.
Q. Did you see the chair placed there?
A. No, sir.
Q. Did you see the hole made in the plastering where that bar was put in to fasten the door?
A. No, sir; I did not.
Q. Did you see anything done to the lock?
A. I did not.
Q. When was the first time you went out of the office that day?
A. When I went to the Star office.
Q. Where was the Star office?
A. On the Avenue, above Eleventh street, I think. I went there about half past ten or towards eleven o'clock, and took an advertisement written for the coming of the President and his party.
Q. You went to the Star office for the sole purpose of taking that advertisement?
A. Yes, sir.
Q. You did not take the advertisement before you heard of the President being there?
A. No, sir.
Q. How long were you connected with this theatre?
A. I went there the first Monday in December, previous to the assassination.
Q. What was your sole business there?
A. To take charge of the wardrobes and of the apparatus, and to take charge of the front of the house.
Q. What do you mean by taking charge of the front of the house?

A. Seeing that the necessary repairs were made and attending to all the duties required for a business of that kind.

Q. Were you in this war?

A. Yes, sir.

Q. What company were you in?

A. I commanded a company myself.

Q. Where did you go?

A. I went to the Valley with General Pope.

Q. When did you return to the war?

A. Shortly after his retreat at Bull Run.

Q. Did you continue in it afterwards?

A. Until I got sick.

Q. When were you taken sick?

A. After the battle of Cedar Mountain.

Q. Did you go into the theatre then?

A. I went in the December following; if I am not mistaken, the first Monday in December.

By Mr. BRADLEY:

Q. Were you fighting on the rebel side?

A. Me, sir? Not much.

WILLIAM O. BALDWIN, physician, residence, Washington city, sworn and examined:

By Mr. MERRICK:

Q. What were you engaged in during the late war?

A. I was a medical officer in the army from 1862 to 1865.

Q. The army of the United States?

A. The army of the United States—none other.

Q. Do you know John Lee, a witness who has testified in this case?

A. I know John Lee, who was a detective in the provost marshal's office at the time I was examining surgeon. I have not been here during the present trial.

Q. Did you know John Lee's general reputation for truth and veracity among the people with whom he associated?

A. I think I did.

Q. What is that reputation—good or bad?

A. It is bad among the gentlemen around the office, the employés, &c.

Q. From that general reputation, would you believe him on his oath?

A. I would not.

Cross-examined by Mr. PIERREPONT:

Q. If he should tell you a man you were looking for had gone into the office of the Secretary of War, would you believe him?

A. I would ordinarily believe it.

Q. If you were looking after any person and he should say he had gone in there, would you be likely to go in to the place pointed out?

A. I dare say I would.

Q. I want you to tell us who the men employed about the office, whom you speak of, were—give us the names?

A. I do not remember; I speak of common report.

Q. Can you give no names?

A. I do not know that I could.

By the DISTRICT ATTORNEY:

Q. Was John Lee chief detective at that time?

A. I do not know whether he was chief detective or not. He was chief detective at one time under Major O'Beirne.

By Mr. PIERREPONT:

Q. How many officers were employed in that office?

A. A large number of clerks. There were a good many employed. I do not know how many. I was examining surgeon.

Q. And you cannot tell the names of any of these men?

A. I cannot.

Q. You do not know whether he had any rivalries or quarrels with any of them?

A. I do not know. I am sure there was never any between him and myself. He tried to make fond of me.

Q. I was not asking of any rivalry between you and him, but between him and others whom you have heard speak of him?

A. I do not know as to that.

JOHN H. WISE, residence Washington, sworn and examined.

By Mr. MERRICK:

Q. Do you know John Lee, who testified in this case?

A. I do.

Q. Do you know his general reputation for truth and veracity among the people with whom he associates?

A. I have never heard that questioned until this.

Mr. PIERREPONT: That is all there is of that.

Cross-examined by the DISTRICT ATTORNEY:

Q. You have been living in this city a long time?

A. Yes, sir.

Q. And are very well acquainted here?

A. Yes, sir.

Q. You knew John Lee well?

A. I never knew him until he got into the provost marshal's office.

Q. You knew him very well there?

A. Yes, sir.

By Mr. MERRICK:

Q. During the pursuit of the men charged with the assassination of the President, did you meet Lee in the lower part of Maryland, or in Prince George county?

A. I did.

Q. At that time did Lee say to you that he did not know John H. Surratt, and had never seen him?

Question objected to by the district attorney. No ground had been laid to contradict the witness.

Mr. MERRICK said it was a question directed to the discretion of the court as to whether the witness should be recalled for further examination. The court had once decided this witness could not be recalled at that time, but the circumstances were somewhat different now, inasmuch as the character of this witness had already been impeached, and he proposed therefore again to make the application to the court.

The COURT asked whether the witness having his character impeached would give him any better chance of explaining in regard to the matter in which it was proposed to contradict him? and said the question could not be asked.

Mr. PIERREPONT said the court had already ruled upon this question now four times, and he submitted that counsel should not be allowed to repeat the same question over and over for the court to rule upon.

Mr. MERRICK said they had a right to present such evidence as they thought proper, and to make a record for their exceptions in such matter as they thought most expedient, especially under the law organizing this court, which allows a new trial to come before the court at the general term. This was a question directed to the discretion of the court; and when any new circumstances arose changing the nature of the application, they had a right to renew the application so directed to the discretion of the court.

The COURT said he had no discretion about the matter in regard to questions of law settled by the law. When a witness was to be impeached by proving that he had made declarations contrary to those made on the stand, his attention while on the stand must be directed to such declarations, giving the time and place. He must say that he did not think that when counsel were satisfied they had not done that it was a fair course of catechising the witness, when they knew the foundation had not been laid.

Mr. MERRICK remarked that it was in the discretion of the court to recall the witness.

V. B. MUNSON, clerk in the War Department, residence Washington, sworn and examined.

By Mr. MERRICK:

Q. Where were you engaged during the war?

A. In the army. I served a term of three years, and subsequently was employed in the office of the provost marshal of this district, as a clerk.

Q. Do you know John Lee, a witness who testified in this case?

A. I do, slightly.

Q. Do you know his reputation among the men with whom he associates for truth and veracity?

A. I know his general reputation.

Q. What is that general reputation as a man of truth?

A. It is bad.

Q. Would you, from that general reputation, from what people generally say of him, believe him on his oath?

A. Not in a case of life and death. In trivial matters I might accept his word.

Cross-examined by Mr. PIERREPONT:

Q. What part of the War Department are you in?

A. The Adjutant General's office.

Q. Do you know Mr. Calvert, who testified the other day?

A. I do.

Q. Are you in the same department with him?

A. I am.

Q. Did you ever talk with him about this matter?

A. Not particularly.

Q. Generally?

A. Yes, sir; a few words have passed on it now and then.

Q. You say you knew Lee. What business had you done with him?

A. I was engaged in the general business with him, in the same office. My business was paying rewards for the arrest of deserters. Lee was a detective, and at one time was supposed to have nominal control over all the detectives in the office.

Q. How long did you see him in the office on that business?

A. I do not recollect whether he was there at the time I came to the office or not. I was there employed as a clerk for nine months, from August 10, 1864, until May, 1865.

Q. During the time you were doing business there you heard of this bad reputation?

A. I did.

Q. When he came there to make a report of anything did you believe what he said?

A. He was not under oath then. It was not my business.

Q. I ask you whether you believed it?

A. I cannot answer that question because it was not my business to take what he said as truth or untruth.

Q. I ask you for your belief.

A. I believed him generally in business matters.

Q. Was he under oath?

A. No, not then.

Q. Do you think he would be less likely to tell the truth when under oath than if he was not?

A. I do not know.

Q. What do you think about it?

A. His character and general reputation being bad, I should say he would not.

Q. You think he would be more likely not to tell the truth under oath?

A. No, sir; I do not.

Q. Then why did you say so just now?

A. I did not say he would tell a lie.

Q. Would you believe him when he was under oath?

A. On trivial matters perhaps I would.

Q. What do you mean by "perhaps?"

A. I mean that I would accept his evidence, perhaps, in trivial matters.

Q. What do you call "trivial matters?"

A. In every day matters; but as a member of the jury—

Mr. PIERREPONT. You need not state what you would do then.

Mr. MERRICK asked that the witness might be allowed to answer the question.

The COURT said the witness had no right to put himself in the shoes of the juror.

Mr. MERRICK said he understood the witness had the right to explain and that he supposed he might state that certain responsibility being upon him would prevent him from believing this man.

The COURT. Go on with your questions.

By Mr. PIERREPONT:

Q. You say in ordinary matters you would believe him?

A. Perhaps I would in matters of general business; I would believe him if I had business with him.

Q. That is if he was not on oath. If he was on oath would you believe him in general business?

A. Of course I would.

Q. Now if you were in careful pursuit of one of the officers of your department, General Townsend, for instance, and wanted to find him out, and on coming from the Treasury department you met John Lee, who stated to you that he had just gone into the White House, would you, on that statement, go into the President's house to find him?

A. With no other evidence to the contrary I would.

Q. If he should tell you he saw General Townsend before Willards' that morning talking to the Secretary of War, would you believe him?

A. Generally, I would.

By Mr. MERRICK:

A. I understand you to say that you would believe him upon matters of gen-

eral business, if there was no responsibility resting upon your shoulders, and if there was any great responsibility would you not?

A. I would not.

Q. Whether under oath or not?

A. Whether under oath or not.

By Mr. BRADLEY:

Q. If two years ago Mr. Lee was in pursuit of certain persons and never said anything about being acquainted with those persons until two years afterwards, and at that time said he knew them very well, would you believe him?

(Question objected to by Mr. Pierrepont as improper. Objection sustained.)

LEMUEL J. ORME, farmer and merchant, residence Prince George county, Maryland, sworn and examined.

By Mr. MERRICK:

Q. Do you know John T. Tibbet, a witness in this case?

A. I know him.

Q. Did he reside in Prince George's county?

A. Yes, sir.

Q. How long was he residing there?

A. I knew him when he was a boy. He resided there up to 1862 or 1863.

Q. Where has he been since then?

A. He resided there from 1865 up to last fall.

Q. Do you know what his reputation for truth and veracity is among the people with whom he is acquainted?

A. Yes, sir. I know what it is.

Q. Is it good or bad?

A. Very bad.

Q. From what you know of his reputation for truth and veracity, would you believe him on his oath?

A. No, indeed, sir. (Laughter.)

The court cautioned the audience against indulging in any such levity on such an occasion as this.

Cross-examined by Mr. PIERREPONT.

Q. When did you first become acquainted with Mr. Tibbet?

A. When he was a boy 8 or 10 years old.

Q. How near did you live to him?

A. He was born and raised in the same neighborhood until he went to the war.

Q. What side did he take in the war?

A. He first took sides one way and then the other. He started out as a sympathizer with the southern people, and afterwards he turned up a strong Union man, as the term is.

Q. Which side did you take?

A. I tried to stand as near between the two as I could.

Q. Were you able to stand that way?

A. I was indeed.

Q. When he was taking the southern side his reputation was pretty good, was it not?

A. Not since he has been a man.

Q. Did you hear anybody speak against his character for truth at all before that?

A. Yes, sir; I have heard it before and since. I do not know that made him any better or worse.

Q. Before he was a Union man wont you tell who you heard speak against his character for truth.

A. I heard my brother, George E. Orme.

Q. Who else before he took the Union side?

A. I do not know anything except in reference to business transactions. I was a witness in the case myself.

Q. Your brother spoke of him in relation to that prosecution did he?

A. I do not know that it was altogether about that transaction. I have heard him say he was a very bad man.

Q. Did your brother speak about that transaction?

A. I cannot say whether he did or not.

Q. Your brother said he was not a man of truth?

A. Yes, sir; he said he was a man you could not depend on for anything.

Q. You do not know that you have heard anybody else speak before he became a Union man?

A. I do not know that I can speak of any person except my brother. I do not like to name a person unless I can be positive.

Q. Your brother had a difficulty with him, had he not?

A. I do not know that you would call it a difficulty. He had some transaction. He would not pay him. Tibbets tried to swindle him out of what he owed him before the war.

Q. This was before he tried to be a Union man?

A. I never heard any one speak well of him, I never heard a man speak of him as a gentleman in my life.

Q. I do not know whether he claimed to be "a gentleman" or not. I want to know whether you ever heard any one before he joined the Union side speak of his reputation for truth.

A. I do not know that I could name any one.

Q. Then that reputation was made up by what your brother said?

A. It was his general character and the company the man kept that made it up.

Q. But you never heard anybody say anything at all?

A. I could not be positive about that. I cannot recollect back that far.

By Mr. BRADLEY:

Q. Do you mean to say that you never heard anybody speak of his reputation for truth except your brother before the war?

A. I cannot recollect individuals at this time. I have never heard any man speak well of him since he has been grown up. No man in business would trust him for anything.

Q. And he has had the same character ever since so far as you know?

A. So far as I know he has had just the same character. I do not think the fact of his going into the army changed his character one way or the other.

By Mr. PIERREPONT:

Q. You testified on the conspiracy trial, did you not?

A. I did.

Q. Were you called for the defence?

A. From the way I was examined, I judge they called me about Mr. Thomas. I suppose I was called by the defence.

Q. You came then, to swear against a man's character for truth, did you not?

(Question objected to by Mr. Bradley. Objection overruled. Mr. Bradley desired an objection to be noted.)

Q. Do you know who was on trial when you were called as a witness:

A. I did not know either one personally.

Q. Do you know their names?

A. I heard their names.

Q. Did you hear the name of Mrs. Surratt?

A. Yes, sir.

Q. What did you testify on that trial?

A. I cannot recollect.

Q Did you testify against the good character for truth and veracity of this Mr. Thomas?

A. I was not asked about the good character of anybody.

Q. The bad character then?

A. Yes, sir; I did testify to the very bad character of Mr. Thomas.

Q. You testified to that?

A. Indeed, I did. I suppose they called me to testify concerning his evidence and the character of the man generally.

WILLIAM J. WATSON, farmer and planter, residence Prince George's county Maryland, sworn and examined.

By Mr. MERRICK:

Q. Do you know John T. Tibbet?

A. I do; he is a son of my close neighbor.

Q. Are you his uncle?

A. No, sir; neither by ties of blood nor affinity.

Q. Is there any other William J. Watson?

A. I know of no other. If there is any other I do not know him.

Q. How long have you lived there?

A. I have lived not more than two miles from the place where I now reside since I was born.

Q. You say this Tibbet is no relation of blood or affinity to you?

A. I am not his uncle by blood or affinity. I have understood that my grandmother and his great-grandmother were cousins.

Q. Did Mr. Tibbet ever tell you that Mrs. Surratt said she would give a thousand dollars to any one who would kill Lincoln?

A. Never.

Question objected to by Mr. Pierrepont on the ground that the foundation had not been laid to contradict the witness, Tibbet.

Mr. MERRICK read from the testimony of the witness, Tibbet, to show that the foundation had been laid.

Mr. PIERREPONT withdrew his objection.

Q. Have you ever had any conversation with Tibbet about Mrs. Surratt?

A. The next to the last time he was in my neighborhood, I did. It was somewhere about the first of April of the present year.

Q. What did he say?

A. There was a conversation which took place in regard to a quarrel that was going on in the House of Representatives between General Butler and Mr. Bingham, of Ohio. He took sides with General Butler in the argument. I took sides with Mr. Bingham. I think that in the course of the argument he said that she had been illegally executed. That is the impression on my mind. He took sides with General Butler and said she was innocent.

Mr. PIERREPONT asked if there was anything in the examination of the witness, Tibbet, to warrant these questions.

The COURT said that inasmuch as this conversation had been referred to in that examination it was a proper subject of contradiction.

Q. Do you know Mr. Tibbet's general character?

Mr. BRADLEY said he had promised the witness that question should not be asked in consideration of his relations with the father of the witness, Tibbet.

Mr. PIERREPONT insisted that the question should be asked.

The COURT replied that the counsel could not be compelled to ask any question if they did not choose to ask it.

Cross-examined by Mr. PIERREPONT:

Q. Were you examined on the trial of the conspirators?

A. Yes, sir; I testified there.

Q. Did Mr. Tibbet ever call you uncle?

A. Never that I know of; he always called me Mr. Watson. There are young men there who on account of my age call me uncle, but I do not know that he ever did.

Q. Men to whom you were not uncle?

A. Yes, sir; men to whom I was not uncle.

Q. They pretty generally down there called you "Uncle Watson," did they not?

A. No, sir; not generally; some of them did.

Q. What was your usual title?

A. "Major" is my general title.

Q. Are you a "major?"

A. No, sir; I never was a major.

Q. In this conversation you speak of you took sides with Mr. Bingham; you said you thought Mrs. Surratt was guilty, did you?

A. Yes, sir; and I think so yet. Not from anything I know about it, but so far as the testimony was brought on that case, I think so.

By Mr. MERRICK:

Q. Do you know the witness Tibbet's general character for truth and veracity in the neighborhood where he lives?

The WITNESS said it was understood he should not be asked that question. They were born within two miles of each other, and he hoped it would not be pressed.

Mr. PIERREPONT objected to the question. It was not in response to anything brought out on the cross-examination.

The COURT sustained the objection.

Mr. MERRICK said that under the ruling of the court the witness could step down from the stand, and he then had the right to re-call him. He therefore asked the witness to step down; which the witness did, was re-called and the question repeated to him.

WITNESS. I know it but I do not wish to state it.

Mr. MERRICK. We cannot help that. Public duty is superior to private feeling.

The WITNESS. I do not wish to answer it on account of my feelings for his father.

Question insisted on.

A. I must say that it is bad.

By Mr. PIERREPONT:

Q. You know his father pretty well?

A. Yes, sir; I know him to be a very fine man.

Q. Do you know his mother?

A. Yes, I know his mother. I am intimately acquainted with her. I see them nearly every day.

Q. Do you want to say anything about her good character?

Question objected to by Mr. Bradley as improper.

Mr. PIERREPONT said he had not asked the question. The witness had volunteered to state the good character of the father.

Mr. BRADLEY said it was the duty of the counsel to have stopped him.

Mr. PIERREPONT said he did not stop a witness on cross-examination.

Objection overruled.

A. Yes, sir; I will say everything for her good character.

Q. Now tell us who you ever heard say that Tibbet's character for truth and veracity was bad.

A. I have heard B. J. Naylor; I have heard George E. Orme, and I believe I have heard nearly every man in that neighborhood. I heard his uncle tell me in this city on last Saturday afternoon at his own door, that he would not believe anything he said.

Q. Was this uncle on the same side with him during the war?

A. He was in the federal army; whether he was on the same side in politics or not, I do not know.

Q. In this conversation you had with Mr. Tibbet, you told him you believed Mrs. Surratt was guilty?

A. I did; I told him I believed she was guilty; and I think that every man——

Mr. MERRICK. No matter what you have said outside.

By Mr. BRADLEY:

Q. Although Mr. Tibbet's father is an excellent man and his mother an excellent woman that does not affect your judgment of the character of this son?

A. No, sir; he has brothers of as good character as the father and mother.

BENJAMIN J. NAYLOR, residence Prince George's county, Maryland, sworn and examined.

By Mr. MERRICK:

Q. How far from William J. Watson's do you live?

A. In the same neighborhood, about half a mile apart.

Q. What is your business?

A. Farming.

Q. Do you know J. T. Tibbet, who was a witness in this case?

A. Yes, sir; I know him.

Q. Did he live generally in that neighborhood?

A. He formerly lived there, until a short time ago.

Q. Does his father live in that neighborhood?

A. Yes, sir.

Q. Do you know John T. Tibbet's general character for truth among the people who know him down there?

A. It was said to be bad in my neighborhood.

Q. From his general character for truth and veracity would you believe him on oath?

A. From what other people say of it I would not.

Cross-examined by Mr. PIERREPONT:

Q. If he was to come and tell you any fact which he had seen, would you believe it?

A. No, sir; I would not.

Q. If he should come down there and tell you, for instance, that he had seen Mr. Bradley, and that Mr. Bradley wanted you to come up here and be a witness?

A. No, sir; I would not. I would not believe anything he said.

Q. If you were away from home anywhere, a mile in the country, and Mr. Tibbet were to come to you——

Mr. MERRICK interposed to ask the ruling of the court as to the form of questions the counsel was putting. He thought he should be limited in his speculative inquiries to the same kind of questions required to be put on the examination in chief, simply as to what the witness knows from his general character for truth and reputation.

The COURT said he thought the witness understood that to be the form of the question.

Q. resumed. If you were in the country, a mile from your house, and Mr. Tibbet were down there and should tell you that your wife had been taken suddenly very ill, from what you know of him and his reputation, would you believe him and would you go home, or would you not pay any attention to him?

A. If I was as near by as that it would not be much trouble for me to go.

Q. If you were two miles away would you go?

A. I would not go.

Q. I do not know anything about your relatives and will therefore take some other subject. Perhaps you would not go at all. If you heard that your house was on fire would you?

A. Not if it were two miles away; for it would be burned down before I could get there.

Q. Suppose you were half a mile away?

A. If I were half a mile away, I could see the flame and could tell for myself.

Q. Suppose you were behind a hill so that you could not see the flames, what would you do?

A. It would not be much trouble to walk up to the top of the hill.

Q. Do you think you would walk up the hill?

A. I think it likely I would take that trouble.

Q. On what he told you?

A. It would not be much trouble to walk up the hill, and the biggest story-teller in the world might sometimes tell the truth.

Q. You think, then, that notwithstanding what you know of his reputation, that in ordinary matters you would act upon what he told you?

A. No, sir; I do not think I would from his general character.

GEORGE E. ORME, residence Prince George's county, Maryland, sworn and examined.

By Mr. MERRICK:

Q. Do you live near the residence of William J. Watson?

A. Yes, sir.

Q. How long have you lived there?

A. I was born and raised there and lived there until 1847. I lived in Washington from that time until 1857. I have lived there ever since.

Q. Do you know a man by the name of John T. Tibbet, who was a witness in this case?

A. Yes, sir; he was raised not far from my father's.

Q. Does his father live near you?

A. Yes, sir.

Q. Will you state to the jury whether or not you know his general character for truth and veracity—what people generally say of him?

A. It was very bad: that was their general talk in the neighborhood before I left there.

Q. From his general character for truth and veracity would you believe him on oath?

A. I do not think I would.

Cross-examined by Mr. PIERREPONT:

Q. Did you have any difficulty with him?

A. Never.

Q. Never had any trade with him?

A. Yes, sir; he used to deal with me when I kept store.

Q. Did not he refuse to pay you?

A. I got the money. He always said he would pay me.

Q. Did you have any trouble about it?

A. I attached the money after he left there.
Q. The first time?
A. That was some time ago, four or five years ago, I think.
Q. Did you have any trouble about it?
A. Nothing, I only gave it to an officer.
Q. Did you talk any about it?
A. No, sir; he had left there.
Q. Did you talk anything about that transaction?
A. It was talked about in the neighborhood generally.
Q. Did you talk about it?
A. Yes, sir; I talked about Tibbet.
Q. Did you take the same side with him in the war?
A. Yes, sir; Tibbet was in the army. I was not.
Q. Which side did you sympathize with?
A. I was opposed to secession very much, but I was opposed to coercion.
Q. You were against putting down the rebellion by arms?
A. Yes, sir; I did not like to see fighting going on.
Q. You objected to that?
A. Yes, sir; I did. I thought they had better settle it.
Q. When Tibbet took the Union side, you felt somewhat hostile to him?
A. Not for that, I did not.
Q. You did for something?
A. Nothing, only I had a disrespect for the man. His general conduct was bad. I could not respect him as a gentleman. I had nothing against him as a man.
Q. When did he take the Union side?
A. I believe he was rather that way all the time; I do not know. His father was a blacksmith, and he used to be a blacksmith. His father is a very honest old fellow and good citizen. I had work done down there, and this young man was there. I never heard of his being out of the neighborhood up to that time. He drove a stage for a little while and then went in the army.
Q. You did not join either army?
A. No, sir.
Q. But your sympathies were against coercion?
A. Well, if I had had my say I think I should have settled it without fighting. I was opposed to secession as much as any man could be.
Q. And you were also opposed to coercion?
A. I was opposed to fighting. I thought it could be settled. I always believed it could from the commencement of it; and I believe it would be better to settle it in that way than to fight.
Q. You were not a witness on the conspiracy trial?
A. No, sir; I was not. I was summoned, I believe.

By Mr. BRADLEY:

Q. You stated to the counsel that you did not consider Tibbet a gentleman. Did that make any difference in your estimation of his character for truth?
A. No, sir; there was never any difference between us as far as being friendly with me was concerned. He was just as friendly as my brother. I believe now if I were a candidate in that district he would vote for me.
Q. I want to know if there was any change in the estimation of his character in the neighborhood after he took the Union side?
A. The longer he staid the worse he got as long as he staid there.
Q. How did he get worse?
A. He got worse in the habit of telling lies.
Q. Who have you heard speak of his character?

A. I have heard several; I have heard Mr. Watson; I have heard Lemuel Orme.

Q. Did you hear them say he was not a man of truth?

A. Yes, sir.

Q. You have just stated to counsel on the other side that he was as friendly to you as a brother?

A. Yes, sir; we never had any difference to my recollection; he was just as friendly as a brother. He came to me the night before he left and asked me to give him a dollar. Of course I did not think as much of Tibbets as I would of my brother; but as far as doing an injury is concerned, I would not do him an injury.

Q. Were you and he friendly, as brothers?

A. What I mean was, when I would meet him we would meet as friendly as brothers. He would come up and speak to me.

Q. Did you meet him often?

A. Yes, sir; when he was at his father's shop he used to shoe my horses.

Q. How long did this friendship as brothers continue?

A. Until the night he left there.

Q. When did he leave there?

A. Some time last fall.

Q. And you were as friendly with him as brothers up to last fall. When you say friendly as brothers, do you mean you associated with him as a brother, or that you had kindly feelings for him?

A. I mean that when I would go there to get business done at the blacksmith shop, there was no ill feeling—that we had no personal ill feeling towards each other.

The court, at this point, took a recess for half an hour.

AFTERNOON SESSION.

FRANCIS A. WARD sworn and examined.

By Mr. MERRICK:

Q. State where you reside.

A. In the lower part of Prince George's county, at Horse Head.

Q. In the neighborhood of Mr. Watson's?

A. Yes, sir.

Q. State whether you know John T. Tibbet, a witness in this case?

A. I do.

Q. State whether or not you know his general character among the people with whom he associates for truth and veracity.

A. I do; it is bad.

Q. State whether or not, from his general character, from what you have heard said of him as a man of truth, you would believe him under oath.

A. I would not like to do it.

Cross-examined by Mr. PIERREPONT:

Q. Where do you live?

A. At Horse Head, Maryland.

Q. Were you examined before the military commission that tried the conspirators?

A. I was.

Q. What were you examined upon then?

A. In reference to the character of Thomas.

Q. You swore against his character, didn't you?

A. I could not swear otherwise.
Q. You did swear against it?
A. Yes, sir.
Q. Do you know any of those persons who were tried at the conspiracy trial?
A. I was slightly acquainted with Doctor Mudd.
Q. He is the only one you knew?
A. He is.
Q. How near do you live to Tibbet's father?
A. About two miles.
Q. You would not believe anything that Tibbet said, from his reputation?
A. No, sir.
Q. If he should tell you that your horse had got out of your lot into your neighbor's lot, you would not go out after it, would you?
A. I might; but I would not know whether he was telling the truth or not.
Q. His statement wouldn't induce you to go out?
A. No, sir.
Q. You would not have any regard for anything he might say regarding any ordinary matter.
A. No, sir.

BERNARD HENZE sworn and examined.

By Mr. MERRICK:

Q. State where you reside?
A. In Washington.
Q. What is your business?
A. Manager of Metropolitan Hall.
Q. Do you now manage that Metropolitan Hall.
A. Yes, sir.
Q. Do you own the property?
A. No, sir.
Q. Lease it?
A. Yes, sir.
Q. State where you were residing and what you were doing in April, 1865.
A. In 1865, I was carrying on the same business that I do now.
Q. What is your business?
A. Keeping a concert saloon.
Q. Tell the jury whereabouts the Metropolitan Hall is located.
A. Right next door to the Star office, on D street between Eleventh and Twelfth streets.
Q. Does D street there front on the avenue?
A. It does.
Q. Does Metropolitan Hall look out immediately on the avenue?
A. Yes, sir.
Q. What sort of business is done at Metropolitan Hall?
A. Well, theatrical performing; the same style of performance as used to be had at the Canterbury.
Q. Had you charge of Metropolitan Hall on the 14th of April, 1865?
A. No, sir; I was not in the city on that day; I was in Philadelphia.
Q. Was the hall in your possession?
A. Yes, sir.
Q. Being run under your control?
A. Yes, sir.
Q. In whose charge did you give the direction of the hall when you left to go to Philadelphia?
A. Under the control of three men: my own brother, Martin Henze, George Nackmann, and Officer Voss.

Q. Do you recollect at what time you went to Philadelphia?
A. On the Sunday before.
Q. When did you come back?
A. I believe on the 17th or 18th; I am not sure, or the week after.

Cross-examined by Mr. PIERREPONT:

Q. What was the number of the entrance on D street?
A. I do not know; I do not think there is any number at all. It is right next door to the Star office.
Q. There is no entrance on the avenue?
A. The entrance is on D street directly facing the avenue.
Q. On what street is the front of the hall?
A. On D street.

By Mr. MERRICK:

Q. There is nothing between the hall and Pennsylvania avenue?
A. No, sir; there is a kind of square there.

MARTIN HENZE sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?
A. In Philadelphia, and also in Washington.
Q. Where were you residing and doing business in April, 1865?
A. In my brother's place.
Q. Where was your brother's place in April, 1865?
A. The Metropolitan Hall.
Q. Where is the Metropolitan Hall?
A. On Twelfth street.
Q. Fronting on what street?
A. On D street.
Q. Does it also front any other street, or is there anything between it and the avenue?
A. It looks right out on the avenue.
Q. Do you recollect your brother going to Philadelphia—going north anywhere in April, 1865?
A. Yes, sir.
Q. In whose charge did he leave the hall when he went away?
A. He left it in charge of Mr. Nackmann and myself, and the officer who had charge to keep order there.
Q. Will you state whether or not there was any performance in that hall on the afternoon of Friday, the 14th of April, 1865.
A. No, sir; not to my knowledge.
Q. Could there have been any there without your knowing it?
A. No, sir.
Q. Were you there all the time?
A. I was.
Q. What time does your performance generally begin at the hall?
A. We have a rehearsal three times a week, Monday, Wednesday, and Saturday. In the evening the show commenced at about quarter to eight o'clock, and lasted until quarter of twelve o'clock.
Q. State whether between the hours of two and five on Friday afternoon, the 14th of April, 1865, there was any dancing or performance going on at that hall?
A. No, sir.
Q. What kind of tables are there in that hall?

A. All square tables.
Q. Are there any round tables there?
A. No, sir; there never were any round tables there to my knowledge.
Q. Had you any music there in the afternoon?
A. No, sir.
Q. Were there any women dancing in the afternoon?
A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. Were there any women dancing there that afternoon?
A. No, sir.
Q. At any time during the day?
A. Yes, sir; when we had rehearsals.
Q. When did you have your rehearsals?
A. From 11 to 12 o'clock.
Q. What time in the day?
A. In the forenoon.
Q. Did you ever have any dancing there in the afternoon?
A. No, sir.
Q. What else did you do there besides have women dance at rehearsals?
A. Business.
Q. What kind of business?
A. Show business.
Q. What kind of a show?
A. Performing.
Q. What kind of performing?
A. Somewhat like a theatre.
Q. Have you any liquor there to sell?
A. Yes, sir.
Q. Did people stop around the tables and drink it?
A. Yes, sir.
Q. Do you remember a torchlight procession in Washington after we had heard of the news of the fall of Richmond?
A. Yes, sir.
Q. When was it?
A. I do not recollect.
Q. Do you remember whether there were any parade or rejoicing here after we heard of the fall of Richmond?
A. Yes, sir.
Q. When was that?
A. It was the 3d of April.
Q. Do you remember whether there were any after that in April?
A. I do not recollect any.
Q. Between the third and the twentieth of April, you do not remember any torchlight procession?
A. There was not any to my knowledge.
Q. You do not think there was any on the 14th of April—Friday, do you?
A. Yes, sir.
Q. You think there was one that day?
A. No, sir.
Q. There was not?
A. No, sir.
Q. No torchlight procession on the evening of the 14th of April?
A. No, sir.
Q. Are you sure about that?
A. Yes, sir; I think so.

Q. As sure about that as of the rest you have stated?
A. Yes, sir; from my knowledge.
Q. Did you take either side during the war?
A. No, sir.
Q. Did you express any sympathy for the one side or the other?
A. No, sir.
Q. You were neither for the Union nor the rebellion?
A. No, sir; I kept neutral.
Q. What kind of dancing did you have there?
A. Well, different kinds.
Q. The object of having your show, or concert, was to make money, was it not?
A. Yes, sir; to make a living.
Q. When there was any great excitement or holiday you were more likely to wish to have your exhibition, were you not?
A. Yes, sir; generally the case; we did not, however, look much after that.
Q. You looked after getting as many people as you could there, didn't you?
A. They always came in by themselves.
Q. I suppose more came in by themselves when there were a good many to come in?
A. Yes, sir; generally the case.
Q. On this Friday, the 14th of April, there was no torchlight procession, nor anything to excite the people at all?
A. No, sir; because the place had not been opened; that is, the place was open but there was no show; the place was open for the inside people going in and out.
Q. You are quite sure that there was no excitement and no torchlight procession?
A. I think so.
Q. Your memory is as distinct in regard to that as it is with regard to any fact you have testified to?
A. Yes, sir; I think so.

By Mr. MERRICK:

Q. You say there was no torchlight procession on the day of the fourteenth of April?
A. No, sir; there was not.
Q. Do you recollect any torchlight procession on the night of the fourteenth of April, 1865—The night the President was assassinated.
A. Yes, sir.
Q. You state there was none during the day, but that there was one during the night?
A. There was.
Q. I understood you to say that you had no performance there on the afternoon of the 14th of April?
A. No, sir.
Q. You had a performance there that night?
A. Yes, sir.
Q. Do you know whether or not when you have a performance in the afternoon it is advertised?
A Yes, sir, always; especially if there is anything going on.
Q. In what paper?
A. Well, we always advertised in the Star.

Q. Do you recollect any matinee there after April, in 1865, in the summer or fall of that year?
A. Yes, sir; several of them.
Q. Were they advertised?
A. Yes, sir; all matinees have been advertised.

By Mr. PIERREPONT:

Q. You now think you did have a performance there on Friday night?
A. Yes, sir; but not in the afternoon.
Q. Wont you state what performance you had on Friday night?
A. The same as usual—dancing and singing.
Q. And you now remember that there was a torchlight procession that evening?
A. Yes, sir.
Q. Did you think I was asking you about a torchlight procession in the day time?
A. No, sir.
Q. Did you think I meant that?
A. No, sir; I did not understand you at the minute.
Q. Did you have any drinking there that night?
A. Yes, sir.
Q. Did anybody come in that afternoon and drink?
A. Some few people.
Q. Do you know who?
A. No, sir.
Q. Did you know J. Wilkes Booth?
A. No, sir.
Q. You never knew him?
A. No, sir; I never saw him.
Q. Do you know the prisoner?
A. No, sir; I never saw him before.
Q. Did you know Atzerodt?
A. No, sir.
Q. You do not know whether they came in and drank or not?
A. No, sir.
Q. Somebody did?
A. Yes, sir.
Mr. MERRICK. When did your dancing and singing begin at night?
A. At a quarter to 8.

GEORGE NACKMANN sworn and examined:

By. Mr. MERRICK:

Q. Where do you reside?
A. In Washington.
Q. What is your business?
A. I am now in the dry goods business.
Q. What were you engaged in 1865?
A. I was a musician.
Q. Had you charge of a band of musicians?
A. No, sir; I was the leader of the orchestra at Metropolitan Hall.
Q. Where is Metropolitan Hall?
A. On D. street, fronting the avenue.
Q. Between what streets?
A. Between 11th and 12th.
Q. Were you engaged at Metropolitan Hall as the leader of that orchestra in April, 1865?

A. I was.
Q. Do you recollect Mr. Bernard Henze going to the north in April, 1865?
A. Yes, sir; he went to Philadelphia.
Q. In whose charge did he leave the hall at that time?
A. In the charge of his brother, the police officer, and myself.
Q. What was the name of the police officer?
A. Mr. Voss.
Q. What were your duties as leader of the orchestra in connection with the performance at that hall?
A. I was business manager in general for some time during the month of April, for Mr. Henze. Mr. Henze was very often absent from the city, and at such times he always gave me charge of his place.
Q. Were you or not present when the performances were going on?
A. All the time.
Q. What kind of performances did you have there?
A. We have the same performances there as they had at Canterbury.
Q. Dancing, music, &c?
A. Yes, sir.
Q. What time did your performances begin?
A. The music commenced to play at 7½ o'clock; the performance commenced at 8 o'clock, and closed at 11 or quarter to 12.
Q. Do you recollect Friday, the 14th of April, the day preceding the night when the President was assassinated?
A. I do.
Q. Will you state whether or not on the afternoon of April 14, 1865, there was any music or performance at that hall before 7½ o'clock?
A. No, sir; there was not.
Q. Are you positive of that?
A. I am.
Q. Could there have been a performance at that hall on the afternoon of the 14th of April, 1865, without your knowing it?
A. No, sir.
Q. Do you know whether or not there was any performance in the afternoon at any subsequent time in 1865?
A. Yes, sir.
Q. At what time?
A. There was a performance there for my benefit in September.
Q. A matinee?
A. Yes, sir; it was the first matinee ever given in that hall.
Q. Was that advertised in the papers?
A. Yes, sir. I could not have made anything out of it unless I had advertised it well.
Q. Are you positive that that was the first matinee ever given while you were connected with that hall?
A. Yes, sir; since the 1st of January, 1865.

Cross-examined by Mr. PIERREPONT:

Q. What country are you from?
A. Germany.
Q. What part of it?
A. On the Rhine.
Q. I noticed you put your hat on, why was that?
A. I believe in the Old Testament. I swear by that.
Q. You do not believe in the New?
A. No, sir.
Q. Were you in Washington on the 14th of April?

A. I was.
Q. Where were you in the morning?
A. At the hall.
Q. What did you do there?
A. General business always calls me there.
Mr. PIERREPONT. I did not ask you what called you there, but I asked you what you did there on that morning.
A. I stopped in there.
Q. At what time.
A. That I could not say.
Q. How long did you stay there?
A. That I could not tell.
Q. When did you leave?
A. When I went to my dinner.
Q. Where did you get your dinner?
A. That I cannot tell either, because I take my meals wherever I feel like it.
Q. What performance was at this hall in the evening?
A. Do you mean afternoon or night?
Q. I ask what the performance was in the evening?
A. There was no performance there in the afternoon. At night there was the usual performance of music and dancing.
Q. When, according to your theory, does night begin?
A. When it is dark.
Q. Did you commence the music at that hall at 7½ o'clock on the night of the 14th of April?
A. We did. We always commenced at that time.
Q. Did any women dance there that night?
A. Certainly, ladies danced there.
Q. Was there any drinking there that night?
A. Yes, there is a public bar in the room.
Q. Were there any tables where the people drank at?
A. Yes, sir.
Q. Did they sit down and drink?
A. They generally sat round the tables.
Q. Did any bodycome in there that night?
A. I suppose so, as the hall was crowded.
Q. Did anybody come in there that afternoon and drink?
A. That I cannot tell. They might and they might not.
Q. Were you there all the afternoon?
A. No, sir.
Q. Where did you go?
A. That is what I cannot tell you.
Q. You got your dinner somewhere?
A. Yes, sir; and I might have gone back after dinner, and I might not.
Q. Can you tell where you were between 1 and 7 o'clock?
A. Indeed I cannot.
Q. Then you don't know how many people came there in the afternoon?
A. No, sir.
Q. The 14th was not at all a holiday, was it?
A. It was Good Friday.
Q. Was it observed as a holiday for any other reason?
A. Not as I know of.
Q. Was there any procession that evening?
A That I cannot recollect.
Q. Did you hear of any that evening?
A. Not to my knowledge was there any.

Q. No torchlight procession?
A. I cannot recollect any.
Q. When there was a holiday or time of any great rejoicing among the people, you had more people to come in and drink than usual, didn't you?
A. Certainly, sir.
Q. Your performance was better attended then, was it not?
A. I do not know. The business has been always alike at Metropolitan Hall; always been first rate.
Q. Always precisely alike?
A. Yes, sir.
Q. Then it was just as good in April, 1865, when there were a few people in town, as when there were many?
A. Yes, sir; I do not know what you mean by a few people, but I know the place was always crowded.
Q. When people came in to drink in the afternoon, was it then always full?
A. I don't recollect of the place ever being full, or even half or quarter full in the afternoon.
Q. Did you ever see anybody drinking there in the afternoon?
A. Certainly.
Q. Any great number?
A. Five, ten, or fifteen I have seen go up to the bar and drink. It is very seldom that I have ever seen any gentlemen sitting at the table drinking in the afternoon.

By Mr. MERRICK:

Q. You say there were tables in the room?
A. Yes, sir.
Q. What sort of tables?
A. Square tables.
Q. Any round tables there?
A. No, sir; we have never had any round tables there.
Q. You say you do not recollect about a torchlight procession that night?
A. No, sir.
Q. What were you engaged in that night?
A. Playing the violin.
Q. From 7½ o'clock to 11?
A. Yes, sir.
Q. At which end of the hall is the orchestra?
A. Right in front of the stage.
Q. At which end is the stage?
A. Right in front of the orchestra (Laughter.)
Q. Is it at the front or the back of the hall?
A. At the back furthest from the street.
Q. And your orchestra, I suppose, like all orchestras, made some noise on its own account?
A. Yes, sir.
Q. At night when the performance is going on, Metropolitan Hall is almost always crowded?
A. Always.
Q. But in the afternoon before the performance begins, you never saw as many as fifteen or twenty people sitting around the tables?
A. I never saw ten sitting around the tables.

AUGUSTUS VOSS sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?
A. On 10th street, No. 302.

Q. What is your business?
A. I am a policeman.
Q. What was your business in April, 1865?
A. I was a policeman.
Q. What part of the city had you charge of in your official capacity?
A. The lower portion of the second ward.
Q. How long have you lived here?
A. Some thirty years.
Q. Do you know where Metropolitan Hall is?
A. I do.
Q. Was that within the portion of the city given in charge to you?
A. Yes, sir.
Q. Where is Metropolitan Hall?
A. On the south side of D street between 11th and 12th streets.
Q. Does it look out towards the avenue?
A. Yes, sir.
Q. State whether or not you recollect Mr. Bernard Henze going north in the month of April, 1865.
A. I recollect he was absent the day the President was killed.
Q. Did you have anything to do with Metropolitan Hall?
A. I was employed there to keep order.
Q. By Mr. Henze?
A. Yes, sir.
Q. Were you there the day or the night of which the President was assassinated?
A. I was in that neighborhood all the afternoon.
Q. State whether or not on the afternoon of April 14, the day the President was assassinated, there was any music and dancing at Metropolitan Hall before 7½ o'clock.
A. Yes, sir.
Q. Between 12 and 5 o'clock of the afternoon of the 14th of April, did you go into Metropolitan Hall?
A. I did not go in as I know of, I might have, but I do not recollect.
Q. You remember the torchlight procession on the evening of that day, I suppose?
A. No, sir; I think I was in Grover's theatre at that time.
Q. Were you at Metropolitan Hall, at all, during the evening of the 14th of April, 1865?
A. No, sir; I sent somebody else in my place.
Q. Between 12 o'clock at noon on the 14th of April, 1865, and 12 o'clock at night, of the same day, were you once in Metropolitan Hall?
A. I could not say I was.
A. No, sir.
Q. Are you positive there was none?
A. I am perfectly satisfied of it.
Q. What sort of tables have they in the Metropolitan Hall?
A. Square tables.
Q. Any round tables there?
A. None.
Q. What time on the night of the 14th of April, 1865, did the performance at Metropolitan Hall begin?
A. I was not there that night?

Cross-examined by Mr. PIERREPONT:

Q. At 12 o'clock, on the 14th of April, 1865, where were you?
A. I was at dinner at that time.

Q. Where did you go from dinner?
A. Down to that portion of the city.
Q. On patrol duty?
Mr. MERRICK. I understand you to say you were in the neighborhood, and if there had been music and dancing there that afternoon you would have known it?
A. Yes, sir; I was in that square pretty much all the afternoon.

THOMAS GEARY, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?
A. On D street, between First and Second.
Q. How long have you lived in Washington?
A. About 18 years.
Q. What is your occupation?
A. I keep a livery stable.
Q. Do you know W. E. Cleaver, a witness in this case?
A. Yes, sir.
Q. Do you know his general reputation for truth and veracity among the people with whom he associates and in the community where he lives?
A. Yes, sir, I do.
Q. What is his reputation as a truthful man?
A. It is generally bad.
Q. From his general reputation among the people with whom he associates, would you believe him on his oath?
A. No, sir; I would not.

Cross-examined by Mr. PIERREPONT:

Q. Who have you heard say they would not believe him on his oath?
A. I have heard a great many.
Q. Well, who?
A. I could not name any particular one?
Q. Have you heard anybody say it, until since he was on trial for fornication?
A. I heard a great many people speak bad of him before the trial.
Q. Before that trial did you ever hear anybody say they would not believe him under oath?
A. I never heard it tested.
Q. Did you ever hear anybody say before that trial that they would not believe him on his oath?
A. I have heard people say he was a liar.
Q. Did you ever hear anybody say they would not believe him on his oath before his trial?
A. I never saw his oath tested.
Q. Who did you ever hear say it, before Cleaver was put on his trial, that he was a liar?
A. I cannot particularly say. It was an ordinary occurrence.
Q. Can't you name one whom you heard say he was a liar?
A. No, sir.
Q. The point they were talking about was not so much about his being a liar as being something else, was it?
A. It was pretty much on the subject of his being a liar.
Q. Who was it that it was pretty much so with?
A. The community at large who knew him.
Q. Who?

A. I cannot call any one's name.
Q. Have you had any difficulty with Cleaver?
A. No, sir.
Q. Any rivalry with him in stable keeping?
A. No, sir.
Q. He is a horse doctor, isn't he?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. Where was it you heard these conversations?
A. Ordinarily over the city.
Q. Can you state any particular place where you ever heard any such conversation?
A. No, sir, I cannot. Yes, I may say I have heard it over here on the national race course.
Q. Is that the only place you can recollect?
A. Yes, sir.
Q. Can you give us the name of the person whom you heard speak of him there?
A. No, sir; it was in a crowd.
Q. You don't recollect a single person who was in that crowd?
A. No, sir.
Q. Can you state the substance of what was said on that occasion?
A. It was about throwing a race off, or his friends—deceiving his friends.
Q. State as near as you can what was said.
A. I cannot state what was said, further than there was a general conversation to that effect.

By Mr. PIERREPONT:

Q. With which side did you sympathize in the late war?
A. I did not sympathize with either side particularly.
Q. You did not sympathize with the Union side generally?
A. Oh, yes, sir; I made my living here and expected to stay here. All I had was here.
Q. Which side did you sympathize with particularly?
A. The Union side.
Q. You have always, have you not?
A. Yes, sir.
Q. What then did you mean when you said that you didn't sympathize with either side particularly?
A. Well, I did not think I was very deeply interested in either side.
Q. Didn't you think you were deeply interested in preserving the government?
A. I said all I had was here, and I expected to stay here with it.

By Mr. MERRICK:

Q. I understand you to say that although you cannot name the persons, it was the general talk that he was a liar.
A. Yes, sir.
Q. And so common that you cannot name any one individual?
A. Yes, sir.
Q. The counsel asked you whether or not you had heard anything said before Cleaver's trial for fornication; when was the trial?
A. Some two months ago, I believe, sir.
Q. What was the trial for?
The DISTRICT ATTORNEY: Stop. Were you in the court-room at the time he was tried?
A. No, sir; I read it in the papers.

By Mr. MERRICK :.

Q. Do you know of your own knowledge what he was tried for?
A. Yes, sir.
Q. I believe you say you were not in court at all during that trial. Did you ever here Cleaver say what he was tried for?
(Objected to by the DISTRICT ATTORNEY. Objection sustained.)
Q. Have you, within the last five or six months, missed Cleaver from the community?
A. Yes, sir.
Q. When did he appear again upon the theatre of action?
A. Some two weeks ago, as near as I can recollect.
Mr. PIERREPONT objecting to this course of examination, the Court sustained the objection on the ground that if it was for the purpose of fixing the time of the trial of Cleaver, it was not proper. The witness must speak from his own knowledge of the time of the trial; or else, the record of such trial must be produced.

WILLIAM H. HORNER, sworn and examined.

By Mr. MERRICK :

Q. Where do you reside?
A. I live on Fourteenth street between G and H.
Q. How long have you lived there?
A. Forty-seven years is what my father and mother told me, (laughter.)
Q. Do you know William E. Cleaver?
A. I do.
Q. How long have you known him?
A. Ever since I came to Washington.
Q. Do you know his general reputation in the community as a man of truth and veracity?
A. Yes, sir; and it is pretty bad.
Q. From what you have heard people say of William E. Cleaver's character, as a man of truth or falsehood, would you believe him on his oath?
A. I would not.

Cross-examination.

By the DISTRICT ATTORNEY :

Q. What is your business now?
A. I make medicine.
Q. What sort of medicine?
A. Horner's mixture.
Q. For what kind of diseases?
A. For any kind you may name—any inward disease.
Q. How long have you been engaged in the business?
A. For thirty years I have been making it for different people and giving it away. Within the last two years I have gone into the making of it as a business.
Q. Did you devote yourself during these thirty years exclusively to that business?
A. No, sir.
Q. What was your other businsss?
A. I used to own carriages and used to work as hackman. When the war broke out I sold the carriages and quit the business of hackman.
Q. Did you keep a livery stable?
A. I was with Mr. Geary for a while, superintending his stable.

Q. The same Mr. Geary who was a witness here?
A. Yes, sir.
Q. When did you quit Mr. Geary?
A. I cannot exactly say; about a year or so ago.
Q. Was Cleaver in the habit of attending to Geary's horses and your horses?
A. I always attended to my own horses.
Q. Did he ever doctor your own horses?
A. No, sir.
Q. Did you ever employ him for that purpose?
A. No, sir; I always doctored my own horses.
Q. Were you in the habit of furnishing your mixture for horses?
A. No, sir.
Q. Did you ever doctor horses yourself?
A. Yes, sir.
Q. Were you and Cleaver engaged in that business at the same time—of doctoring horses?
A. Only for a few friends who used to call on me.
Q. Did you charge for it?
A. Sometimes, and sometimes not. That depended upon what circumstances the man was in.
Q. Was Cleaver engaged in that same business?
A. Yes, sir; I believe he was.
Q. Did you know Cleaver personally?
A. Yes, sir. I have been in company with him.
Q. Were you in the habit of associating with him?
A. No, sir.
Q. Did you speak to him?
A. Yes, sir; when I met him.
Q. On friendly terms?
A. Yes, sir; we never had a word in our lives.
Q. Do you recollect the first time you ever heard his reputation for truth questioned?
A. I do not. I have heard it at different places. Once at Mr. Flemming's stable, when a man's horse was sick there.
Q. I want you to fix the time.
A. I cannot fix the time.
Q. Give us some idea?
A. I cannot give you any idea.
Q. Go on and state what it was.
A. I heard some gentlemen there say, when speaking of this sick horse, "Send for Cleaver;" when another one said, "There is no use sending for Cleaver: I wouldn't believe him for nothing." These are the words, as near as I remember. I think they were gentlemen from Maryland.
Q. Then they did not send for Cleaver?
A. I do not know whether they did or not. I left.
Q. Don't you know these gentlemen?
A. No, sir.
Q. How long did you stay there on this occasion?
A. I do not suppose I staid there more than twenty minutes, as near as I can come at it.
Q. You thought that this remark that was made about Cleaver was an imputation upon his veracity?
A. I have heard such remarks frequently.
Q. You say you don't recollect either the time, the place, or the persons, except on this one occasion, and you think from that conversation that his reputation is bad?

A. I have heard it before. He is a man who has been all over the city, as have. A man who follows my business is first in one place and then another. I didn't pay much attention to it any how.

Q Notwithstanding you are in the habit of going to all sorts of places in the city, you do not recollect the name of a single person that you heard speak of Cleaver, except the one you have mentioned?

A. No, sir.

Q. I will ask if you had any conversation with Geary this morning about Cleaver?

A. Yesterday morning, having received two letters for some of my medicine, one from Chicago, he being a partner of mine, I went round to see him. We got to talking, when he said that he had been summoned to court. I think I asked him what about, and he told me in regard to Cleaver. "Oh," says I, "I wouldn't believe him on his oath." He said, "I am going to have you summoned." I told him not to do it; that I wanted to have nothing to do with the thing.

Q. Did you have any conversation with any one else?

A. No, sir; not as I know of.

JAMES W. PUMPHREY, sworn and examined.

By Mr. MERRICK:

Q. State how long you have lived in this city.

A. All my life.

Q. Do you know William E. Cleaver, who was a witness in this case?

A. I do.

Q. How long have you known him?

A. From twelve to fifteen years, I guess.

Q. Where did he come from?

A. He is, I believe, an Englishman by birth.

Q. Do you know Cleaver's general reputation for truth and veracity throughout this community?

A. I have heard it spoken of frequently.

Q. Before this trial?

A. Yes, sir; a good many years back. I think his reputation is very bad.

Q. From his general reputation, as a man of truth and veracity, would you believe him on his oath?

A. I would not like to.

Cross-examined by Mr. PIERREPONT:

Q. Won't you state who you have heard say he was a liar?

A. I cannot tell any particular one, but it is a universal thing. I never heard a man speak well of him in my life. I have heard plenty of men say that they would not believe him on his oath.

Q. Won't you name one?

A. I cannot remember any particular one.

Q. Try.

A. You have some witnesses here whom I have heard say so.

Q. Can you remember of anybody except these witnesses?

A. I do not remember of anybody at present.

Q. Have you talked with Cleaver?

WITNESS. When?

Mr. PIERREPONT. At any time.

WITNESS. Not lately.

Q. Within two years?

A. Yes, sir; within two years I have.

Q. What have you talked with him about?
A. About horses, and one thing and another.
Q. Did you place any reliance upon what he said, in view of this bad reputation for truth and veracity?
A. He is a man in whom I never placed much confidence at all. When he and I were talking it was about matters that didn't amount to anything.
Q. Did you believe he was telling the truth?
A. If he was to tell me anything of any account I would not believe it.
Q. If he had told you that he had seen any friend of yours up at Willard's hotel, you would not have believed it?
A. I would doubt it very much.
Q You would not, on his statement, go up there for the purpose of meeting the person if you were anxious to see him?
A. I would not go across the street to see any person whom he might state to be there.
Q. You would pay no attention to anything he might say?
A. None, whatever.
Q. From his reputation, that is the reason?
A. Yes, sir.

By the DISTRICT ATTORNEY:

Q Can you state some persons whom you have heard speak of his reputation for truth?
A. I cannot name any.
Q. Can you state any particular time or place where you have heard this matter spoken of?
A. I cannot; I have heard it at different times and places for the last eight or nine years.
Q. Can you state the substance of what you have heard said?
A. I have heard persons say that he was a bad man to have dealings with, that they would not believe him on his oath.

By Mr. PIERREPONT:

Q. You keep a livery stable?
A. Yes, sir.
Q. And he did?
A. I believe he did; I do not know that, however.

By Mr. MERRICK:

Q. I understand you to say, in reply to the counsel, that this opinion expressed in public was so universal that you cannot fix upon any one particular individual?
A. That is it exactly.
Q. No one man made an impression upon you because they all said the same thing?
A. Yes, sir; I heard everybody state the same thing.

By Mr. PIERREPONT.

Q. And out of that everybody you cannot name one?
A. I cannot think of one just now.

JOHN C. COOK, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?
A. In Washington.
Q. How long have you resided here?
A. Since '43.

Q. Do you know William E. Cleaver, who was a witness in this case?
A. I do.
Q. Do you know his general reputation in this community as a man of truth and veracity?
A. I do.
Q. State whether that reputation is good or bad.
A. Very bad.
Q. From that general reputation would you believe him on his oath?
A. I would not.

Cross-examined by the DISTRICT ATTORNEY:

Q. How long have you been living in the city?
A. Twenty-four years.
Q. What has been your business?
A. I have been in a heap of businesses. I was in the hotel business, since I was engaged in buying and selling niggers, as you are aware I was at one time; I was at that time keeping a livery stable too.
Q. What business was Cleaver engaged in at that time?
A. He was considered a veterinary surgeon.
Q. Did you have him in your employment during that time?
A. He was about my stable a good deal.
Q. Do you know Mr. Rainey?
A. Yes, sir.
Q. The partner of Cleaver?
A. Yes, sir; I know all the Raineys.
Q. Cleaver was his partner?
A. He is reputed to be his partner sometime since the war.
Q. Was not his stable immediately opposite to yours?
A. Mr. Rainey was no partner when my stable was opposite his. I learned that some two or three years ago Cleaver and Rainey bought the stable I formerly owned on 6th street. My stable is now on 8th street. I sold out my stable on 6th street and moved to 8th street, but they did not buy me out. About a year or a couple of years afterwards they were together at that stable, and I understood that they were partners. Whether they were or not I do not know.
Q. Where is Rainey's stable?
A. I do not know that he has any.
Q. Has Cleaver any stable now?
A. Not that I know of.
Q. Do you know when he quit that business?
A. I do not.
Q. Did you ever employ him as a veterinary surgeon?
A. I think he has sometimes given medicine to horses.
Q. Didn't you employ him?
A. No, sir; (after a pause) yes, I think once, he did go to the Navy Yard with me to look at a horse.
Q. How long has Cleaver been living in this city?
A. I do not know exactly, it seems to me that he has been here some fifteen or sixteen years.
Q. How long have you known him personally?
A. Ever since he came to the city. I guess I was about the first one who did know him. Dorsey and myself were then keeping stable together.
Q. When was the first time you ever heard any imputation upon his veracity?
A. It has been so long ago I cannot tell. I never heard any good of him in my life.
Q. Can't you state some particular time when you have heard his reputation for truth questioned?

A. We have been frequently sitting in the office, when there would something transpire. I recollect on one occasion there was a man taken up for riding across the pavement, when the matter coming up, some one of the party said: "Send for Cleaver, he will swear him out."

Q. Who said that?

A. It was spoken of in the stable. I do not exactly remember who.

Q. In whose stable?

A. In the stables on 8th street. I had my office there, and Mr. Dorsey attended to the stables.

Q. How many persons were present?

A. I do not know; maybe five or six.

Q. Do you know any of them?

A. No, I do not.

Q. Can you give us the name of one of that company?

A. I cannot. I might have made the remark myself. I know it was said.

Q Were you not the person who made the remark?

A. I do not think I was, for I am not apt to make remarks of that kind about any body. I am not apt to say anything that will hurt any one's feelings.

Q. You cannot give us the name of any one person who was present?

A. I think Mr. Owen Shekells was present.

Q. Did he make the remark to which you have referred?

A. I do not know that he did.

Q. Who else besides Mr. Shekells was present?

A. I think Mr. Allen Dorsey was also present, though I am not sure.

Q. Did he make that remark?

A. I do not know that he did.

Q. Who else were present?

A. I do not know that they were present for a certainty. That has been ten years ago.

Q. State some other occasion when you heard his veracity questioned?

A. It was the general conversation when he was alluded to. I have frequently heard Mr. Shekells say he would not believe him on his oath.

Q. Who else?

A. I have heard Mr. Henry Middleton say so.

Q. Do you recollect when?

A. I have heard him speak of his reputation for truth at the club room.

Q. State what Mr. Middleton said?

A. He said he would not believe him on his oath.

Q. When was this?

A. I do not think it has been more than a couple of weeks ago.

JOHN RAINEY, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. On the Island, between 7th and 8th streets.

Q. How long have you lived in this city?

A. I have been living here for sixteen years.

Q. Do you know William E. Cleaver?

A. Yes, sir

Q. Do you know his general character for truth and veracity?

A. Pretty well.

Q. What is his general character?

A. Very bad.

Q. From his general reputation, as a man of truth and veracity, or as a liar, would you believe him on his oath?

A. No, sir.

Cross-examined by Mr. PIERREPONT:

Q. Were you a partner of Cleaver?
A. No, sir.
Q. Are you connected by blood with the same Rainey?
A. He is an uncle of mine.
Q. Who have you heard speak of Cleaver?
A. Several.
Q. I ask who?
A. I have heard a great number here in town. Mr. Middleton for one.
Q. When did you hear him say it?
A. Before he was arrested and had his trial.
Q. What did you hear him say?
A. That he was not a man to be believed.
Q. When did you hear him say it?
A. Sometime before Cleaver was arrested.
Q. Where?
A. Down at the Sixth street stable.
Q. Anybody else?
A. Mr. John O'Brien.
Q. Where did you hear him say it?
A. At his restaurant, on Four-and-a-half street.
Q. When?
A. Over a year ago; and last night.
Q. Who else?
A. I cannot think of any others at present.
Q. In consequence of this reputation you would not believe anything he said?
A. No, sir.
Q. State whether he was under oath or not.
A. No, sir.
Q. If he told you any fact you would not pay any attention to it?
A. No, sir.
Q. If he told you there was a horse for sale at a particular place, you would not believe it?
A. No, sir; not until I went there and saw it.
Q. You would not go there to look would you?
A. That would depend on circumstances; if I was going that way I might stop.
Q. But you would not go and look in consequence of the statement he made to you?
A. No, sir.

HENRY MIDDLETON, sworn and re-examined.

By Mr. MERRICK:

Q. State where you reside.
A. Louisiana avenue.
Q. How long have you lived in Washington?
A. Eighteen years.
Q. Do you know William E. Cleaver, who was a witness in this case?
A. I do.
Q. State whether or not you know his general character in this community as a man of truth and veracity.
A. I do.
Q. What is his general character as a man of truth?
A. Very bad.

Q. Would you, from his general character for truth and veracity, believe him on his oath?
A. I would not.

Cross-examined by Mr. PIERREPONT:

Q. What is your business?
A. Restaurant keeper.
Q. Where?
A. Ninth street.
Q. How long have you kept this restaurant?
A. I have been in business for fifteen years.
Q. Do you sell liquor there?
A. Yes, sir.
Q. Won't you please state who you have heard say that they would not believe him under oath.
A. I have heard Mr. Samuel Rainey say so for one, and Mr. Michael Cragon for another.
Q. When did you hear Mr. Rainey say this—that he would not believe him on his oath?
A. Some four or five weeks ago.
Q. Who else did you hear say it?
A. I disremember now.
Q. In consequeuce of this reputation, you would not believe anything he said?
A. No, sir; I would not.
Q. Do you know him personally?
A. I do.
Q. Did you ever have any dealings with him?
A. Some little.
Q. What sort of dealings?
A. No further than only keeping my horse at a livery stable.
Q. Did you ever have any difficulty about that?
A. No, sir.
Q. When he told you he would keep your horse, in view of this reputation, did you believe he would?
A. I supposed he would.
Q. What made you think he would?
A. Because he had a partner with him.
Q. That is the reason?
A. Yes, sir.
Q. If he told you there was a horse for sale in another stable, you would not go there to see it?
A. No, sir.
Q. Nor would you believe him in any ordinary matter?
A. No, sir.
Q. Would not pay the least heed to what he might say?
A. No, sir.
Q. Which side did you take in the late rebellion?
A. I stood neutral.
Q. Did you sympathize with either side?
A. Well, somewhat.
Q. How did the "somewhat" go?
A. Being rather southern raised I could not help my feelings.

By Mr. MERRICK:

Q. The counsel has asked you to give the names of the persons who said this

about Cleaver, I want to know whether it was'nt the general talk among all who knew him?

A. Yes, sir.

By Mr. PIERREPONT:

Q. But you cannot give any more than you have given?

A. No, sir.

Q. Where were you born?

A. In Maryland.

Q. What part?

A. Prince George's county.

Mr. MERRICK. A very good place to come from.

WITNESS. We raise white men there.

JOHN HOLAHAN, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?

A. In Washington city.

Q. How long have you lived here?

A. About 14 years.

Q. Do you know William E. Cleaver, a witness in this case?

A. I do.

Q. Do you know his general reputation for truth and veracity in this community?

A. I do.

Q. What is it?

A. Pretty bad.

Q. Would you, from that general reputation, believe him on his oath?

A. I should not like to do so.

Cross-examination.

By Mr. PIERREPONT:

Q. Did you come from the same country Cleaver did?

A. I do not know. I was born in Ireland. I understand he says he was born in England.

Q. What is your business?

A. Working in the different departments. I worked in the Treasury Department; in the Patent Office; at the Insane asylum, and around at other places.

Q. Where are you working now?

A. I have not worked any for the last five or six months. The last place I worked at was the Government Printing Office.

Q. Did you leave there?

A. I was discharged, I believe.

Q. Why were you discharged?

A. The Superintendent told me that the work was pretty scarce.

Q. That was the reason?

A. That was the only reason I knew of.

Q. And for the last six months you have not been doing any thing.

A. O, yes, I have. I said I was not at work any where. I do a little grocery business, and a very little of it.

Q. What is that?

A. Selling a little tea and sugar.

Q. Where do you sell it?

A. On F street.

Q. Do you sell any thing else?

A. Yes, sir; I sell bread.
Q. Any thing else?
A. Well, a great many things in the line of groceries.
Q. Do you sell liquor?
A. I used to sell a little of it sometime ago.
Q. Do you sell any of it now?
A. No, sir.
Q. What is the trouble—any difficulty about it?
A. No, sir; only I have not a license.
Q. Did you sell some without a license, and get into trouble?
A. No, sir; I have never been into trouble as regards any liquor.
Q. Were you acquainted with Cleaver?
A. I knew him a little.
Q. Who did you hear talk against his character for truth?
A. I have heard a great many.
Q. "Who?" is my question.
A. I disremember now. I could not bring to memory.
Q. Do you remember the place where it was?
A. I do.
Q. Where?
A. I have heard it often down at his stable; and I have heard it in the neighborhood where I have been living.
Q. Who did you hear say it?
A. I disremember.
Q. You cannot mention one whom you heard say it?
A. No, sir.
Q. You would not believe a word Cleaver says on any subject, would you?
A. I would not like to do so.
Q. Would not have any sort of faith in what he should say about any ordinary matter?
A. I should not like to do so.
Q. You don't believe he would tell the truth under oath?
A. No, sir; because once he told me that he didn't care for an oath.

By Mr. BRADLEY:

Q. What did he say?
A. He said he had no scruples with regard to taking an oath if it suited his purposes—if he could make any thing by it.
Q. When did he tell you that?
A. In the latter part of August, 1865.
Q. Where was that?
A. That was down at his stable on Sixth street.
Q. How came he to tell you that?
A. Some few of us were in conversation, when the subject of the conspiracy trials, at which Cleaver was a witness, came up. He then made this remark. It was during the latter part of the trial.
Q. Who was with you?
A. I disremember their names.
Q. Don't you remember any of them?
A. No, sir; I could not say, positively.
Q. Was that at his stable?
A. Yes, sir.
Q. You used to go there pretty often, didn't you?
A. I used to go there generally.
Q. Generally for what? What did you go there to see this bad man generally for?

A. I had no particular business as far as that is concerned. I went there no more than I would go any where.

Q. You knew then he was a pretty bad man?

A. I had no dealings with the man. I would not like to trust him.

Q. You knew then he was a very bad man?

A. I thought by his own acknowledgment that he was.

Q. And yet you would go there to see him?

A. Not to keep company with him. I went there to see friends of mine.

Q. Who?

A. William Hussey.

Q. Did you use to see him there?

A. Yes, sir; very often.

Q. Was he there when you had this talk with Cleaver?

A. I could not say.

By Mr. MERRICK:

Q. I understand you to say that it was the general talk, that he was a liar and not to be believed?

A. Yes, sir; that was the general talk.

Q. Tell us what he said about his own oath, on the occasion to which you have referred?

A. He said he had no scruples as regards taking an oath if it would suit his own purposes, and he could make anything by it.

Q. That was after he had been sworn as a witness on the conspiracy trials, and while you were all engaged in a general conversation with regard to that trial?

A. Yes, sir.

By Mr. PIERREPONT:

Q. He said that freely before them all, didn't he?

A. Yes, sir.

Q. Was there any secrecy about it?

A. There was none.

Q. It was openly avowed?

A. Yes, sir.

Q. But you cannot give us the manners of any of these men?

A. No, sir.

Q. What was he talking about then?

A. He said he was a witness down there.

Q. Did he say he had sworn falsely there?

A. I cannot remember whether he did or not.

Q. Do you know whether he said he had sworn falsely there?

A. No, sir.

Q. What did he swear to there?

A. I do not know. I never read his testimony.

Q. How happened this conversation that you speak of?

A. It was late in the afternoon. Some of the men there were reading the papers outside, and I believe that is the way it came up.

Q. Who was reading the paper?

A. I disremember.

Q. Who first spoke.

A. I cannot say. I heard Cleaver make the remark.

Q. What led him to make such a strange remark?

A. That I do not know. I heard him expressing himself.

Q. Was he saying it to you?

A. To the party. I believe he remarked it to me.

Q. He repeated it over to you?
A. Indeed I could not say exactly, but I heard him express it.
Q. Was he addressing you?
A. He was addressing all who were there. I could not say to whom he was addressing the remark particularly.
Q. Did you hear him make the remark twice?
A. I heard him make the remark. I could not say whether I heard him make it twice or not.
Q. Did you ever go there again?
A. Yes, sir.
Q. Did you ever speak to him there again?
A. Yes, sir.
Q. Frequently?
A. I continued to go there sometimes.
Q. Did you think that his saying that was all right?
A. I had no dealings with him.
Q. But you continued to visit there?
A. Yes, sir; for a certain business. There was a man there who owed me some money, and I went to get it on several occasions.
Q. Who owed you money?
A. Mr. Samuel Hussey.
Q. Did you get your money?
A. I got part of it.
Q. Where is William Hussey?
A. He is here in town.
Q. He never paid you?
A. Yes, sir; he has pretty much paid me.
Q. Did he pay you at Cleaver's?
A. No, sir.

JAMES FOY, sworn and examined.

By Mr. MERRICK:

Q. Where do you reside?
A. In Washington.
Q. How long have you lived here?
A. Thirty-six or seven years.
Q. Do you know William E. Cleaver, who was a witness in this case.
A. Yes, sir.
Q. Do you know his general reputation for truth and veracity in this community?
A. It is pretty bad.
Q. You know what people say of him generally?
A. Yes, sir.
Q. From his general reputation, as a man of truth or as a liar, would you believe him on oath?
A. It would depend on circumstances. If he had anything to make by it I would not believe him. In an ordinary transaction I would have to believe him.
Q. Have you had any conversation with William E. Cleaver, a witness examined in this cause, in reference to his having received any offer or promise of benefit, advantage, or reward for the testimony he should give in this case; if yea, state what that conversation was?
The DISTRICT ATTORNEY. I object, on the ground that the foundation has not been laid.
Mr. BRADLEY read from Cleaver's testimony, page 93 of the official record, as follows:

"Q. Have you received any offer, favor, or reward for the testimony you have given in this case?

"A. I have not from anybody.

"Q. You are quite sure of that?

"A. Yes, sir. I have not from anybody."

Mr. BRADLEY then stated: I propose to show, by the witness on the stand, what Cleaver had said to him, regarding the promise of favor or reward that he was to have to testify in this case.

Mr. PIERREPONT. I do not believe that the counsel really thinks that is legitimate under the ruling of your honor.

Mr. BRADLEY. I do not know nor care what the gentleman believes, I propose it as a question of law to be decided by the court.

Mr. PIERREPONT. Then I object.

Mr. BRADLEY. Then object with courtesy, if you please. Do not say you do not believe I am sincere when I make a proposition to the court.

The COURT. The witness Cleaver states here that he never did receive any offer of favor or reward. If you wish to contradict that statement, you must proceed to do so in the usual manner. I see no reason why a departure should be had, in this particular instance, from the general rule laid down on the subject of contradicting witnesses.

The question being overruled, Mr. BRADLEY reserved an exception.

Mr. MERRICK then offered in evidence the record of conviction in the case of the United States *vs.* William E. Cleaver. Case No. 4,851, tried at the March term for the year 1867 of the criminal court of the District. The record was handed to the court.

Assistant District Attorney Wilson objected to its reception on two grounds: First, because it was not a record of conviction, as the court would, of course, take judicial notice of the subsequent proceedings awarding a new trial, as appeared from the journal which he had placed before him; secondly, because, even if it were a record of conviction, it would not be admissible for the purpose of impairing the credibility of the witness. If it had any effect whatever, it would be as to his competency as a witness, and not as to his credibility, as that could not be affected or impeached in the way proposed. Mr. WILSON read from Bennett and Hurd's leading criminal cases to sustain the point raised.

Mr. MERRICK stated that the prosecution was mistaken. It was a record of a conviction and a sentence. Cleaver was sentenced to five years in the Albany penitentiary. He held that the record was admissible, as affecting both his credibility and competency as a witness. Mr. MERRICK read from 5th Hill, case of Carpenter and Nixon, as sustaining his view of the question. He submitted that if it was a record of an infamous crime it was allowable to go to the jury as affecting the credit of the witness. He offered the record as the record of an infamous crime, and as such competent to go in evidence. He maintained that although Cleaver had been granted a new trial, yet the record could go to show his credibility.

Mr. PIERREPONT said that the record did not affect the moral character of the witness Cleaver except as to one particular point, and thought in no case a record could be used to affect the credibility of the witness, after the counsel had neglected to produce it, to prevent the witness from testifying.

The COURT said that he would state, in the first place, that the court would always take cognizance of its own records—not take notice of a part and ignore the residue. He could not overlook the fact that he helped to reverse his own ruling given in the trial below. Justice Wylie and himself were on one side, and Justice Olin on the other, in reference to one point at least, and that was a very material point in the case. Since the granting of the new trial, the witness Cleaver—defendant in the record before him—had been bailed out, and

was now waiting to be tried whenever the court shall be ready to take up the case. He stood now just as though he had never been tried at all, because *non constat*, but that on another trial he might prove his entire innocence. He could not see, therefore, that there was any record to offer, either as to his credibility or as to his competency. Besides, the conviction was a conviction for manslaughter, which was not a crime which affected the credibility of a witness. Inasmuch as the law presumes every man to be innocent until he is convicted, and finally convicted, and there being no conviction in that case, but the man being now at large on bail awaiting a new trial, therefore there was no record for him to allow to be given in evidence to the jury.

Exception reserved.

The court here took a recess until to-morrow (Thursday) morning, at 10 o'clock.

THURSDAY, *July* 11, 1867.

The court was opened at 10 o'clock.

THOMAS W. WILLIAMS, sworn and examined.

By Mr. MERRICK:

Q. State where you reside.
A. On H street, in this city.
Q. How long have you lived in Washington?
A. All my life; I was born and raised here.
Q. Did you know William E. Cleaver, the witness in this case?
A. Yes, sir.
Q. Do you know his general reputation in the community for truth and veracity?
A. Yes, sir.
Q. What is that reputation?
A. It is generally bad.
Q. From his general reputation, as a man of truth or a common liar, would you believe him on his oath?
A. I should not think I would.

Cross-examined by the DISTRICT ATTORNEY:

Q. How long have you known Cleaver?
A. About ten or eleven years.
Q. You are engaged in the livery business?
A. Yes, sir; I have been. I am not, at present.
Q. Did you see much of Cleaver?
A. I have seen a good deal of him within the last three or four years.
Q. Were you in the habit of employing him as a veterinary surgeon?
A. No, sir.
Q. Do you recollect that he was a partner with Mr. Rainey in business?
A. I recollect seeing him with him on 6th street; I do not know whether he was engaged with him or not.
Q. Do you know how long he was engaged in the livery stable business, in connection with his business as veterinary surgeon?
A. No; I do not recollect. While passing by I have seen him on 6th street a good deal, down around the stable. I never went there very often.
Q. Will you tell us who it was you heard speak of his character for truth?
A. I have heard a good many say they would not believe him on his oath.
Q. When was that?
A. I have heard it here lately.
Q. Had you ever heard of it previous to this trial, or to the trial of Cleaver?

A. I do not know as I ever did hear anybody say they would not believe him on his oath before the trial.

Q. You know there was a good deal of prejudice excited against him on account of that trial. Now I will ask you if, at any time, you ever heard any one speak of Cleaver's reputation for truth previous to this trial and to his own trial?

A. O, yes, sir; I have.

Q. Will you state when it was?

A. I have heard persons speak of him at the time he was put in as government inspector of horses on the other side of the river.

Q. How long was he acting in that capacity?

A. I do not recollect how long it was. I recollect he put a few horses of mine in while he was over there.

Q. That was the time when you heard his character for truth assailed?

A. When he was there acting as inspector, persons came to me and remarked that Cleaver was over there inspecting horses, and that if I had any I had better take them over; that I could get them through very handy.

Q. Who was it that told you that?

A. I disremember who the gentlemen were who were putting horses in at that time.

Q. Did you take any horses over?

A. Yes, sir; I did.

Q. Did you get your horses through?

A. Yes, sir.

Q. How did you manage to get them through?

A. Well, I put them through.

Q. Do you mean to say that you paid Cleaver anything for it?

A. I would not like to answer.

Q. Did you bribe Cleaver to put your horses through?

A. I decline to answer.

Q. Why do you decline to answer.

(Objected to by Mr. Merrick. Objection sustained.)

Q. This is a thing, it strikes me, which would make an impression upon your mind. Can you state who it was that gave you this information, upon which it seems you acted?

A. Some of the contractors; I now disremember who. There were a good many at that time.

Q. Can you state the name of one?

A. No, sir; I do not think I can.

Q. Where was it you received this information?

A. At my stable; I kept stable then.

Q. When you got this information how long did you wait before you acted on it? Did you hesitate, or act upon it immediately?

A. I went right over and took my horses there?

Q. How long has it been since you put in horses over there?

A. Nearly four years.

Q. Was that the first time you ever heard his reputation assailed?

A. O, I have heard a great many persons speaking loose of him.

Q. In what respect?

A. I have heard people say he was not an honest man, that he was a liar, and that he couldn't be believed in anything he said.

Q. I want to know when it was, and where it was, and who you heard say that?

A. I cannot tell you when and where it was; it has been so numerous I could not tell you. So many persons have said so, that I cannot tell who they are. I have heard some persons around on H street speak of him in that way.

Q. When?

A. Before the trial; some two or three years ago.
Q. State the names of these persons?
A. Owen Shekells I have heard say he would not believe him on his oath.
Q. Who else?
A. I have heard Mr. John C. Cook say so?
Q. The one who was on the stand?
A. Yes, sir.
Q. Give us some other names.
A. I do not know that I can recall any others, but I have heard a great many round in the neighborhood say so.

By Mr. PIERREPONT:

Q. You thought pretty badly of him when you found he would take your horses, did you?
(Objected to. Objection sustained.)
Q. Did these matters, about receiving and passing horses, enter into the formation of your opinion as to his general reputation?
(Objected to by Mr. Merrick. Objection overruled.)
A. I did not think he was fit for the place.
Mr. PIERREPONT. I am not asking you as to whether you thought he was fit for the place or not, but am asking you whether the fact of his passing horses entered your judgment of his reputation for truth?
A. I should think it did.
Q. You thought, then, that it was damaging to his character for truth?
A. Yes, sir.
Q. When you found that out, did you immediately quit going there?
A. I stopped going there when I got my horses through.
Q. You did not until then?
A. No, sir.
Q. Did you take any side in the late rebellion?
A. No, sir.
Q. Did you have or express sympathy with either side?
A. I was in the three months' service on this side?
Q. Did you continue your sympathies on the Union side?
A. Yes, sir; and I will state that I was under the government employ.
Q. And you had them at the time you were putting the horses in?
A. Certainly, I had.
Q. And they were quite keen then, were they not?
A. Yes, sir.

By Mr. MERRICK:

Q. I understand you to say that Cleaver was employed by the government to inspect horses?
A. Yes, sir.
Q. That it was generally said horses could be got through, with his inspection, very easily?
A. Yes, sir.
Q. And that that fact, among other facts, entered into your estimate of his general character for truth?
A. Yes, sir.
Q. Did you understand that, as a man of truth, he was bound to pass no horses but good horses?
A. Yes, sir.
Q. You have been asked by the district attorney to state the name of some individual whom you heard speak of him as a man of truth or falsehood. You state you cannot name any particular party, other than those you have men-

tioned. Now, tell the jury whether it was not almost universally said of him, when his veracity was discussed, that he was not a man of truth.

A. Yes, sir.

Q. Why is it you cannot remember the names of persons who said he was a man who lied?

A. Because so many said so that I cannot.

JACKSON PUMPHREY sworn and examined.

By Mr. MERRICK:

Q. Please state where you reside?

A. In the Seventh ward.

Q. How long have you lived in the city of Washington?

A. About fifty-three years.

Q. What is your business?

A. I am a carpenter and builder.

Q. Do you know William E. Cleaver, who was examined as a witness in this case?

A. I think I do.

Q Do you know his general reputation for truth and veracity in this community?

A. It has never been considered very good, so far as my knowledge of him goes. I have known him for twenty years and upwards.

Q. How long has it been considered bad?

A. I never heard him spoken of as being a very correct and good man in my life.

Q. Have you heard him spoken of in regard to his being a man who would tell the truth, or who would tell a lie?

A. The first time that my attention was called to that was, I think, some twelve years ago. I had purchased a horse—

Mr. BRADLEY. You need not go into facts.

WITNESS. I was going to state that my brother, who keeps a livery stable, stated to me that there was no confidence to be placed in anything Mr. Cleaver told me.

Q. From his general reputation, as a man of truth and veracity, would you believe him on his oath?

A. I do not think I would.

Q. Supposing there was a responsibility resting upon your shoulders for the accuracy of the conclusion to which you were to come, would you take his oath as justifying the conclusion?

(Objected to by Mr. PIERREPONT. Objection sustained. Exception reserved.)

Cross-examined by Mr. PIERREPONT:

Q. How long have you lived in Washington?

A. I was born and raised here.

Q. This talk that you say you had about Cleaver not being believed, was with your brother about a horse?

A. Yes, sir. My brother said he would not take his word in regard to any thing.

Q. Did you ever hear anything generally, said on the subject by men dealing in horses?

A. Yes, sir; I think so.

Q. You have heard some talk on that general subject?

A. Yes, sir.

Q. There is a pretty good understanding down here, and all over the world, so far as you know, isn't there, on the subject of horse-trading?

A. I never dealt much in horse-trading myself, and therefore I am not prepared to answer that question.

Q. Your brother kept the livery stable?

A. He did.

Q. Did you know anything about the way people talked, in buying and selling horses?

A. I should suppose, if I were allowed to say so, that people ought to deal as honestly in transactions of that kind as regards any other transactions.

Q. You have bought and sold horses; have you not?

A. Some little. I have always found men to be very honest in those transactions.

Q. What is your business now?

A. I carry on house building.

Q. Did you take any part in the rebellion, on the one side or the other?

A. If I took it either way, I took it in defence of my country.

Q. Did you take either side?

A. I advised my children to go into the war to put down the rebellion. I had three sons, and I advised them all to go in, and they did so.

Q. Did you take any other part?

A. No, sir.

Q. Has the question of your ability to take the juror's oath ever been brough before you?

A. I have been a juror. I was never questioned as to my loyalty.

Q. Your sympathies went with the Union side?

A. Yes, sir; they did, strongly, and do yet.

Q. Have you ever had anything to do with Cleaver? Have you ever had any business with him?

A. No more than talking with him casually on the street.

Q. Have you often talked with him?

A. I have, I suppose, talked with him a dozen times in my life.

Q. Did you ever trade with him?

A. No, sir.

Q. Was it your brother alone who had horse dealings with him?

A. My brother, as I stated, kept a livery stable. What his dealings with Cleaver were I do not know.

Q. I thought you told us he had dealings, and that that was the origin of this opinion?

A. No, sir; I said I was about to have some transactions with Mr. Cleaver, and my brother advised me not. I was going to give him a horse which I had traded for to attend to. I thought it was desirable that somebody should attend to the horse.

Q. In what way?

A. As horse doctor.

Q. Your brother advised against it?

A. Yes, sir.

TALLMADGE J. LAMBERT, sworn and examined.

By Mr. PIERREPONT:

Q. Will you please state where you reside?

A. I at present reside on H street, between 21st and 22d, No. 176.

Q. What is your occupation?

A. I am a clerk in the office of the Paymaster General.

Q. How long have you been in that office?

A. Since October 11, 1863.

Q. Where did you reside in 1865?

A. I resided on H street, No. 587, between 4th and 5th.
Q. On which side of the street did you reside?
A. On the south side.
Q. How far were you from house No. 541?
A. At most one square and three-quarters.
Q. Will you describe to the jury the external structure of the house you were then living in?
A. The house, as I said before, is situated on the south side of H street, east of the centre of the square, between Fourth and Fifth streets. It is a brick house, three stories and a basement, with high winding steps of granite.
Q. What kind of a basement is it? Is it a basement under ground, or what is known as an English basement?
A. It is an English basement on a level with the ground.
Q. How high are the steps?
A. There are eight steps, I believe; the precise height in feet I do not remember.
Q. Now go on with your description of the house.
A. The house has marble facings, window sills, and tappings. The steps have an iron railing running up on the judiciary side. To the west of the house is an open lot. Immediately adjoining the lot, on the west, is a brick house belonging formerly to Mr. Donn, formerly a justice of the peace here. To the east of the house there is, and was at that time, a brick building scarcely perceptibly higher than my own, and having a different front from the street, the steps letting out immediately from the street.
Q. Who was living with you in that house in April, 1865?
A. There was my mother, and the servant girl. The front floor was occupied by a gentleman and a lady.
Q. Your mother was keeping house?

Cross-examined by Mr. PIERREPONT:

Q. Which way from 541 is 587?
A. To the east.
Q. After you leave 541, what is the first street you come to?
A. Sixth street.
Q. Where is 587 in relation to Sixth street?
A. 587, as I said before, is between Fourth and Fifth streets.
Q. Then after you leave 541, you first come to Sixth street don't you?
A. Yes, sir.
Q. And then the next street is Fifth street?
A. Yes, sir.
Q. And 587 is between what streets?
A. Between Fourth and Fifth.
Q. It is on the right hand side as you go east?
A. Yes, sir.
Q. Won't you tell how wide the lot is?
A. It is twenty-five feet, if I remember correctly.
Q. Do your steps run up both ways, or one way?
A. One way.
Q. It is an English basement?
A. Yes, sir.
Q. Is it of brick?
A. Yes, sir.
Q. Is it painted?
A. Yes, sir.
Q. When was it painted?
A. Not since it was built, some eight or ten years ago.

Q. What kind of finishing has it—the architraves and sills?
A. They are of marble.
Q. White are they?
A. Yes, sir.
Q. Which way do the steps start to go up?
A. The tendency from the top to the bottom is east.
Q. But how high are they?
A. There are, as near as I can remember, eight steps.
Q. And an English basement?
A. Yes, sir.
Q. The house is there now just as it was in 1865?
A. Yes, sir; precisely the same. There is a little difference in the painting of the wood work, but there is no difference in the house.
Q. On the west side of your house there was an open lot?
A. Yes, sir.
Q. On the east side of your house there was a brick house came up also to it?
A. Yes, sir.
Q. Immediately adjoining, with no ally between?
A. No, sir.
Q. How high is the parlor floor from the basement floor?
A. The exact height of the steps, that I could not exactly determine.
Q. When you enter the basement, do you enter on a level with the pavement, or do you step down?
A. You step down two steps.
Q. Then the floor of the basement is below the pavement?
A. Somewhat below.
Q. And you reach the parlor floor by ascending the steps?
A. Yes, sir.

Mrs. FREDERIKA R. LAMBERT, sworn and examined.

By Mr. MERRICK:

Q. Do you reside in Washington city?
A. I do.
Q. Were you living in Washington in 1865?
A. I was.
Q. Will you tell the jury whereabouts in Washington city you were living in April, 1865?
A. 587 H street, between 4th and 5th.
Q. Which side of H street?
A. South.
Q. The house fronting north?
A. Yes, sir.
Q. Do you recollect the night of the President's assassination?
A. I do.
Q. Were you residing in that house on that night?
A. I was.
Q. Will you be so good, Mrs. Lambert, as to tell the jury if anything occurred that night after 10 o'clock, and if you conversed with any one from the parlor window of your house. If so, state the conversation, and who they were, as far as you could judge from their dress.
A. Between 11 and 12 o'clock I heard a voice, indistinctly, on the street, calling out: "The President was shot." I was in the rear room of my house, in my bed room, and I immediately got a shawl and threw it around me and went down to the front door with the intention of going out, but found it was too damp and dark. I then turned round and went into my parlor, my front

room, on a line with the portico. I then opened the window and saw two soldiers passing. I immediately asked them what was the matter—what caused the excitement. One of them spoke up, and said the President was shot. I asked him by whom? He said, by J. Wilkes Booth. I asked him if he saw it? He said he did not; that he was not in the theatre, but about there. I then asked him what so many soldiers were doing in the city. I thought probably there was a mob, or some disturbance; but he told me that they had come in to witness a torchlight procession, and were returning to Camp Barry.

Q. Did they say they were returning to Camp Barry?

A. Yes, sir. Those whom I had seen go by, he said, had gone to Camp Barry, and that they were on their way there.

Q. From what window was it you spoke to them?

A. My parlor window.

Q. Will you please describe the relative position of your parlor to the ground floor; how high was it above the ground floor?

A. I suppose it run up some eight or ten steps. I cannot very well say how high it was.

Q. Did these two men remain together when they were replying to your questions, or did any one of them step forward and make a reply?

A. One stepped a little forward of the other, and spoke to me. I knew they were soldiers. They told me they were; and I saw from their dress that they were. I could see only indistinctly, because the gas in my parlor was very indistinct.

Q. Was it quite dark outside?

A. Yes, sir; very dark.

Q. But you could see with sufficient distinctness to see that they were soldiers?

A. Yes, sir; from the reflection of my light.

Cross-examined by Mr. PIERREPONT:

Q. It was quite dark outside was it not, madame?

A. Yes, sir; it was damp and drizzly weather.

Q. What made you go to the front window, at that hour of the night?

A. To learn if the President was really shot.

Q. What made you think about it?

A. Because, when in my room in the rear of the house, I indistinctly heard a voice in the street say, "The President is shot."

Q You were in the rear of the house?

A. Yes, sir.

Q. The voice was, then, pretty loud?

A. Certainly; the person whom I heard, was calling out to know where some one lived. I could not hear who it was. He exclaimed: "The President has been shot."

Q. It must have been very loud for you to have heard it in the rear of your house?

A. I do not know.

Q. Were your windows open?

A. No, sir; my window was not open.

Q. It was in the middle of April, and very dark, damp, and drizzly, you say?

A. It was not very dark, because I think the moon would at that time have given light had it not been so cloudy and damp.

Q. Where did you first go after you heard that call?

A. I went first to the head of my steps, to listen.

Q. You opened the door, did you?

A. Hearing a voice very indistinctly, I called for my shawl.

Q. Did you open the door?

A. I went down stairs and opened the door, but finding it too damp to go out on the portico——

Q. You did that after you heard this call that the President had been killed?

A. Yes, sir.

Q. When you went to the door, did you see anybody?

A. No one at all.

Q. Did you hear anybody?

A. No, sir; there was not a soul stirring on the street.

Q. Not when you went to the door? But you had heard this cry before you went to the door?

A. Yes, sir.

Q. After you got to the door, it was still?

A. Certainly.

Q. Then you went back to your room and got a shawl?

A. No, sir; I got my shawl before I came down.

Q. You went then, into the parlor?

A. No, sir; I went to the front door.

Q. When you got to the front door, there was nobody in the street?

A. No, sir; not that I am aware of.

Q. Then what next did you do?

A. I then returned. Finding it too damp for my health to go upon the portico, I walked into my parlor.

Q. After you got into your parlor, what did you hear?

A. I heard my own voice, and then I raised the window.

Q. Who were you speaking to?

A. To my servant, or some one in the house.

Q. What did you say?

A. I do not remember, except that I was discussing whether or not it was dangerous for me to go the door.

Q. Did you say so to the servant?

A. I really do not recollect. My purpose—

Mr. PIERREPONT. I do not ask your purpose. You say you heard a voice, and that voice was your own voice?

A. I said if I heard a voice it was my own voice; I do not remember.

Q. What did you say?

A. If my voice was sounding I was debating the question as to the propriety of my going to the front door.

Q. To whom were you speaking?

A. To my servant.

Q. Which servant?

A. A colored woman named Margaret.

Q. What did Margaret say as to the propriety of your going to the door?

A. She insisted upon it that it was not proper; that, as I was very susceptible to cold I had better go to the window.

Q. She remonstrated with you?

A. Yes, sir.

Q. After this remonstrance on the part of Margaret, where did you go?

A. I went to my parlor window.

Q. You remember distinctly that it was dangerous for you to go to the door?

A. Oh, yes; I presume so. It was not a matter of much importance, but still she did say so.

Q. Margaret remonstrated with you, and you agreed with her that it was unsafe?

A. Yes, sir.

Q. While you were talking with Margaret, did you hear anybody out of doors?

A. No. I heard nobody out there then, but I opened the window for the purpose.

Q. While you were talking with Margaret, did you hear any more calls about the President being shot?

A. No, sir; I never heard it afterwards.

Q. After you got into the parlor what did you do?

A. I hesitated as to whether I should open the window until I heard some one coming; but I did open it.

Q. How did it open? Did it raise, or was it upon hinges?

A. It raised.

Q. Was there a blind to your window?

A. Yes, sir; an outside blind.

Q. Do you remember whether it was closed or open?

A. I think it was open.

Q. Was Margaret in the room with you?

A. Yes, sir.

Q. Did she lift it up?

A. No, sir; I think I lifted it myself.

Q. After you lifted it what did you see?

A. I saw just above a good many soldiers going along.

Q. Which way were they going?

A. East from my house.

Q. How many were there about?

A. I suppose about a dozen.

Q. Had they guns?

A. I could not say. I do not believe they had.

Q. But they were soldiers?

A. They were dressed in soldier's clothes.

Q. Marching slow or fast?

A. Walking in an ordinary gait.

Q. They were in no hurry?

A. None that I could discover.

Q. What did this one, that you talked with out of the window, tell you about these soldiers?

A. I asked him what they were doing in town. He told me that they had come in to see the torchlight procession, and were going to Camp Barry. He said himself and companion were also going there.

Q. Did he tell you who his companion was?

A. Oh, no.

Q. What more did you say to him?

A. I asked him if he saw Booth. He told me he had not, that he was not in the theatre, but about there.

Q. Did you ask him anything more than this?

A. Nothing more than what I have stated.

Q. Did he say anything more?

A. He only answered my questions.

Q. Did you ask them where Booth was?

A. I did not.

Q. Did you ask them what so many soldiers were doing in the city?

A. I did. I told them I thought it was a mob, or something of the kind, caused by the assasination of the President.

Q. And you told them you thought so?

A. I think I did.

Q. Did they both talk to you?

A. No, sir; only one.

Q. Would you know him if you were to see him?

A. I do not think I would be able to distinguish him, there was such an indistinct light.

Q. How long did they talk with you there?

A. I suppose from three to five minutes—perhaps not as long.

Q. Did they seem very much excited?

A. Not at all. I remarked that they all seemed to be very cool under the circumstances?

Q. These two men didn't seem to be in any hurry at all?

A. No, sir.

Q. When they walked off, did they walk in a hurry?

A. I did not observe their motions when they left. I had no further business with them, and took no notice of them.

Q. They answered you deliberately?

A. Yes, sir; and very respectfully.

Q. Had they guns?

A. I presume not, as I saw none.

Q. What had they on their heads?

A. I presume they had caps.

Q. Tell the jury what your memory is about whether they had caps on or not?

A. They told me they were soldiers, I did not take any notice of their dress, as I didn't suppose I would ever be called upon to identify them.

Q. Did they have soldier's clothes on?

A. Yes, sir.

Q. What color?

A. Blue.

Q. Were they clothes with capes, or officers' clothes?

A. I could not see very distinctly, but they were not officers clothes.

Q. Had they capes?

A. I think they had, but I am not certain. I know their general appearance indicated them to be soldiers.

Q. Had they the same general appearance as those who marched before them?

A. I did not see those who marched before them.

Q. Did those that marched before them, show any excitement?

A. My window was not open when they passed.

Q. When did you first hear that you were to be called here?

A. I came of my own accord.

Q. When did you come of your own accord?

A. Yesterday. I was reading the paper one day, and seeing the testimony of the witness who had testified on this point, I remarked: "Why, here is either a false representation, or a very strange coincidence; this conversation certainly took place at my house, and I was the one who put the questions to the soldiers."

Q. Won't you tell us whether these persons that you talked with were dressed in the clothes of artillerymen?

A. I have no knowledge of the different suits that soldiers wear.

Q. Will you tell us whether their clothes were light blue, or dark blue?

A. I cannot remember.

Q. Will you tell us whether they wore a jacket, or a long coat?

A. I did not observe the men sufficiently to know whether they had on long coats or jackets.

Q. Will you state whether you can tell anything at all about the color of the clothes?

A. I have already told you that the light was not sufficient for me to observe their clothes, nor would my attention have been called to them had the night been bright as day, unless by accident.

Q. At what time did you read this testimony of which you have spoken?

A. A few days ago.
Q. How many?
A. I suppose three or four; it might have been five or six.
Q. What paper did you find it in?
A. The Evening Express.
Q. When you had read this, how and when did you make known what you have stated here?
A. After I had finished reading I remarked to those in the room, "Here is either a misrepresentation or a very strange coincidence. This conversation, now purporting to come from another, certainly occurred at my house."
Q. After they had passed, did you hear anything more that night?
A. Yes, sir; there was a man across the street, who he was I do not know, relating to some one the facts connected with the killing of the President, he having been present and saw it, as he stated.
Q. Was that before or after the conversation with the soldiers?
A. After.
Q. Did anything else occur after these soldiers left?
A. I do not remember of anything.
Q. How long did you stay by the window?
A. Not very long.
Q. Do you think it was ten minutes?
A. I was looking in and out, being backwards and forwards at the window several times. I do not know that I remained there ten minutes.
Q. At these different times, when you were backwards and forwards at the window, did you see any other people passing?
A. O, yes, sir; I saw a good many soldiers going by.
Q. Were they passing slowly or hurriedly?
A. Some seemed to be in a hurry and others not.
Q. Did they say anything?
A. They were talking to themselves. I did not ask them any questions.
Q. Did you hear them say anything in reference to the killing of the President?
A. They were speaking of the matter, but I did not hear what they said. I had already heard sufficient to convince me that it was true.
Q. Did you see anybody but soldiers passing?
A. There might have been; the light was too indistinct to enable me to say.
Q. It was still dark?
A. Yes, sir.
Q. That is, it was cloudy and drizzly?
A. Yes, sir.

By Mr. BRADLEY:

Q. You have stated that after these facts occurred to your mind, you came and spoke of it?
A. Yes, sir.
Q. Did you come to my office?
A. Yes, sir, but you were not at home.
Q. How long have you known me, madame?
A. Oh, ever since I have known myself.
Mr. RIDDLE. Your reputation is good.
Mr. BRADLEY. I hope so; but it is getting in very bad repute in this case.

MARGARET WILLIAMS (colored) sworn and examined.

By Mr. MERRICK:

Q. Who do you live with?
A. Mrs. Lambert.

Q. Who were you living with when the President was killed?
A. Mrs. Lambert.
Q. And you have been living with her ever since?
A. Yes, sir.
Q. Do you recollect the night the President was killed?
A. Yes, sir.
Q. Do you recollect Mrs. Lambert calling upon you for a shawl or anything that night, after she went to retire?
A. Yes, sir.
Q. What did Mrs. Lambert do when she got her shawl?
A. Hearing loud talking in the street, she went into the room from the passage.
Q. Did she go to the front door?
A. No; she did not.
Q. Did she go into the parlor?
A. She went to the parlor window.
Q. Was the window up or down?
A. Down, and she hoisted it.
Q. Did she speak to anybody?
A. Some soldiers went along—a crowd first, and then two soldiers by themselves. She asked those two what was the matter, and they said the President was shot. She asked them who did it. They told her that Booth had done it.

Cross-examined by Mr. PIERREPONT:

Q. She did not go to the front door, did she?
A. Yes, sir; she did go to the front door, but I told her to come in, because it was too damp out there.
Q. She opened the front door, did she?
A. Yes, sir.
Q. Was she standing in the front door?
A. Yes, sir; out on the portico.
Q. When she stood on the portico at the front door, did you see anybody?
A. No, sir.
Q. Were any soldiers passing while she stood on the portico?
A. I am not certain.
Q. How long did she stand on the portico?
A. Not long.
Q. About how long—five or ten minutes?
A. Not that long. She came in on my advising her to. I told her it was too damp out there for her.
Q. Was it damp?
A. Yes, sir.
Q. Was it raining or drizzling?
A. It was about drizzling.
Q. Did it drizzle—did it succeed in that? (Laughter.)
A. I do not remember whether it did or not.
Q. Was it light or dark?
A. I know it was a very dark night, because I wanted to go to the theatre, and she would not let me go; she said it was too damp.
Q. Where did she go after coming in from the door?
A. Into the parlor.
Q. Did you stand by the window when she was in the parlor?
A. No, sir; I was right behind Mrs. Lambert, but I was not at the window.
Q. How many soldiers passed while you stood there?
A. I could not exactly say. I know a great many passed. Two passed when she asked the question.
Q. They stopped, did they?

A. Yes, sir.
Q. And had a conversation with her?
A. Yes, sir.
Q. How were those two dressed?
A. I do not know.
Q. They had guns, had they?
A. I do not remember. I know they had caps on their heads.
Q. Do you know whether they had these soldiers' clothes with caps?
A. I do not remember.
Q. Was there any ornament on the caps?
A. It was too dark, I could not tell.
Q. Did they seem to be in a hurry?
A. Yes, sir.
Q. Were the other soldiers also in a hurry?
A. Yes, sir.
Q. How long did these men talk there?
A. I do not know how long it was.
Q. Had you heard anything before they came there?
A. Yes, sir; when we were up stairs we heard loud talking, and on hearing it came down.
Q. You were both up stairs?
A. Yes, sir.
Q. In what room?
A. She was in her room.
Q. Where was her room?
A. The back chamber up stairs.
Q. Not over the parlor story?
A. No, sir.
Q. You were with her there; what were you doing?
A. I do not remember exactly what I was doing.
Q. Was she going to bed?
A. Yes, sir.
Q. Preparing to go to bed?
A. Yes, sir.
Q. Tell us what you heard in that back room up stairs over the parlor.
A. I heard loud talking out in the street, and heard something said about the President being shot.
Q. I suppose you both heard this?
A. Yes, sir.
Q. What did she then do?
A. After we heard that, we went into the little room next to it.
Q. What did you do after you got into the little room?
A. She went in there and was going to say something, but she thought they would not hear her and so she came down stairs.
Q. Then did she go to the porch?
A. Yes, sir.
Q. She opened the door and went on the porch?
A. Yes, sir.
Q. And you went to her and told her it was too damp?
A. Yes, sir.
Q. After you came down stairs did you hear any more calling about the President being killed?
A. Yes, sir; I heard soldiers going by talking.
Q. Did you hear them say so as they went by?
A. Yes, sir.
Q. A great many others?

A. Yes, sir.
Q. Did they seem excited?
A. Yes, sir.

By Mr. MERRICK:

Q. Were you present the other day when Mrs. Lambert mentioned about this conversation, to which the witness had testified here?
A. Yes, sir.
Q. You heard her speak of it?
A. Yes, sir; she read it in the paper.
Q. Did you tell her then you recollected it?
(Objected to by Mr. Pierrepont. Question withdrawn.)

Mrs. T. J. LAMBERT recalled.

By Mr. BRADLEY:

Q. State whether you are satisfied this conversation was after eleven o'clock.
A. Yes, sir; between eleven and twelve.

JOHN T. HOLAHAN sworn and examined:

By Mr. BRADLEY:

Q. Where do you now reside?
A. In Baltimore.
Q. In what business are you engaged?
A. I carry on the stonecutting business; make tombstones and attend to marble work generally.
Q. Where were you living in 1865?
A. On H street, at Mrs. Surratt's, between sixth and Seventh Streets.
Q. Had you a family there?
A. Yes, sir.
Q. Do you recollect when you went to board there?
A. The first week in February. I would not like to locate the day positively, but I think on the first.
Q. While you were there state who else boarded in the house besides yourself.
A. Louis J. Weichmann boarded there, and a Miss Dean, a little girl about eleven or twelve years old. They were the only parties who boarded in the house.
Q. Who else lived there and formed part of the family at the time you went? Was Miss Fitzpatrick there?
A. Yes, sir; she boarded in the house.
Q. Do you remember of Miss Lete Jenkins coming there also?
A. Yes, sir; she staid there for about a week, I think.
Q. While you were there did you form the acquaintance of Mr. Louis J. Weichmann?
A. Yes, sir.
Q. Did you ever see a man there named Atzerodt?
A. Yes, sir.
Q. Was Weichmann there before you, or did he come after you?
A. He was there before me. When I went to inquire for board there he was the gentleman who opened the door.
Q. After you went there to board, state whether there was any intimacy between Atzerodt and Louis Weichmann or not?
A. They appeared to be very intimate.
Q. State whether you ever saw them come there together or not?
A. Frequently.

Q. Do you know of any other evidence of their intimacy in regard to clothing, or anything of that kind?

A. One day I met them on the street, between Sixth and Seventh streets. Atzerodt had on Weichmann's military coat and cape.

Q. While they were in the house together, will you state whether there was any intimacy between them or not?

A. They were as intimate as friends could be.

Q. What room did you occupy in the house?

A. Front room, over the parlor. My daughter occupied the adjoining room over the passage.

Q. Your daughter is how old?

A. She is now sixteen.

Q. She was then about fourteen?

A. Yes, sir.

Q. What room did Weichmann occupy?

A. The back room—the room back of my room.

Q. Have you any means of knowing whether or not Atzerodt was up in Weichmann's room?

A. I have seen him in Weichmann's room several times while passing to and from my room.

Q. Did you ever see Herold there?

A. No, sir.

Q. Did you ever see Booth there?

A. Frequently.

Q. In whose company did you find him?

A. He was generally in the parlor with Mrs. Surratt and the ladies.

Q. Can you tell whether he was associating with Atzerodt and Weichman or not?

A. I might say, that on four occasions I have seen them all together.

Q. Atzerodt, Booth, and Weichmann?

A. Yes, sir.

Q. Where were you on the night of the 3d of April?

A. I was in my room.

Q. Do you recollect seeing the prisoner that night?

A. Yes, sir.

Q. What interval of time had passed since you had last seen him before then?

A. May be ten days previous.

Q. Now state all that passed in your presence with the prisoner on the night of the 3d of April.

A. About nine o'clock, or a quarter past nine, I will not designate the precise time, I had just got into bed when there was a rap at my room door. I got up and opened it, and found the prisoner outside. Says he, "I would like to see you for a minute." I put on my pants and went into his room, or Weichmann's room, for they both slept together. He then said to me, "Have you any money."

Q. Was Weichmann present?

A. Yes, sir. Says Surratt, "I would like to have some money." I asked him how much he wanted. Says he, "Fifty dollars." I replied "You can have it," and went into my room and got it out of my vest pocket and handed it to him. I remarked when I gave it to him, "Is that enough?" He says "I should like to have ten dollars more, making sixty dollars in all." I went back and got ten dollars more and gave it to him. He turned and opened the door and was going out, when he stopped and says, "Take these," handing two twenty dollar gold pieces. I replied, I don't want them, you can keep them. You are good enough to me for that amount of money." He insisted on my taking them, and finally I did. That was the last I saw of him until I saw him here in court.

Q. Did Mr. Weichmann, at that time, or any time afterwards, say anything to you about that money?

A. Yes, sir. It was on the Sunday following.

Q. State what he said.

A. We went in company with Mrs.——

The DISTRICT ATTORNEY. Stop, if you please.

Mr. BRADLEY said the court would recollect that Weichmann stated in his examination that Surratt, on the 3d of April, exchanged some gold with Mr. Holahan for paper. He had brought out the testimony in regard to that, and, therefore, as far as that was concerned had nothing to say. He now proposed to prove that on Sunday, the 16th of April, when Weichmann and Holahan with the detectives started in pursuit of Surratt, Weichmann then spoke to the witness about this gold, and told him where Surratt had gone. Weichmann had sworn here that he did not know where he had gone. He wanted to show that he did know at that time, and that their relations throughout were of a most intimate character.

The DISTRICT ATTORNEY held that counsel, in order to show the existence of intimate relations between them, if they considered it a material fact, would have to prove it in the same manner as they would any other material fact. The admission of a party to the suit was always admissible in evidence, but what the witness Weichmann, or any other witness may have said, was not admissible for the purpose of showing any fact, but only admissible for the purpose of contradiction.

Mr. PIERREPONT said that as far as the intimacy was concerned the court would remember the questions he put to the witness. He had proved the closest intimacy; had even proved that they occupied the same room and slept together. The object was not to contradict the fact of the intimacy but was to give in evidence somthing Weichmann said in relation to somebody else, without ever having called his attention to it.

Mr. BRADLEY remarked that it was not in relation to somebody else, but in relation to the prisoner at the bar, showing that he not only was thus intimate with him, but that he was aware of where he had gone.

The DISTRICT ATTORNEY said that in other words it was to prove what they considered an important fact in the case by hearsay evidence.

The COURT said he looked upon it as hearsay evidence, and would therefore rule the question out as improper.

Mr. BRADLEY reserved an exception.

Q. Now, beginning early in the evening of the 14th of April, state all you recollect of the occurrence that night.

A. I will first say that the employés of the arsenal had a torch-light procession that night. In the early part of the evening I was lying down on the sofa in my room. At 7 o'clock—I knew it was seven, because I pulled out my watch and looked at the time—I got up and asked my wife to go down and see the procession. She declined. I then said I would go down myself, and did so. I went down as far as the corner of Seventh street and the avenue, by Seldner's clothing store, and there remained until the procession passed. After it had passed I walked up to Seventh.

Q. What time did you get back to the house?

A. I was going to tell you I turned into D street and got as far as Eighth, at Baker's corner. I had before made up my mind to go to the theatre, but when I reached the corner of Eighth and D, I turned back and went home. I got home at a quarter to nine.

Q. Do you know whether Mrs. Surratt had got back from Surrattsville?

A. Yes, sir; she was at home when I got back.

Q. Did you see or hear John Surratt that night about the house, or anywhere else?

A. No, sir.

Q. At what time did you retire?

A. I went up to my room, I suppose about a quarter past nine.

Q. Were you aroused during the night? and if so, state what passed.

A. About half-past two o'clock my wife woke me. She had heard the noise made by the rapping at the door, and said to me, "There are men rapping at the door, and they want to get in the house." She added, "They look like policemen." They were right down under the door, and she saw their uniforms, I suppose. I jumped up and put my pants on, and by the time I had got them on, Messrs. McDevitt and Clarvoe were at the door in the entry outside of my room, up stairs, in the second story.

Q. Mrs. Surratt's room was where?

A. She slept back of the parlor.

Q. You had the front room over the parlor?

A. Yes, sir.

Q. State what passed when you got to your door.

A. I opened the door and says, "What's the matter." Either McDevitt or Clarvoe, I don't know which, said, "Haven't you heard the news?" Says I, "No, what is it?" he replied, "The President has been assassinated." Says I, "My God, is that so," or something to that effect. "Yes," he said; and then Clarvoe showed me a piece of his neck-tie, which he said he had picked up in the theatre. I invited them into my room, when they made a statement to me of all they had heard concerning the assassination. I then went with them through the house, and searched it. I saw them search every place thoroughly.

Q. Do you remember of them going up to the room over the one occupied by your daughter?

A. Yes, sir.

Q. By whom was that room occupied?

A. By Miss Anna Surratt and Miss Jenkins.

Mr. BRADLEY:

Q. I mean the little room over the passage?

A. That was the servant's room.

Q. Did he search the room in which the servant was?

A. I opened the door, and Clarvoe looked in. I am not sure whether he went in or not.

Q. When you got to the room where Miss Anna Surratt and Miss Jenkins were do you remember of telling them to stop a moment, while you apprised the young ladies of their coming?

A. Yes, sir; I first went in myself and told the yound ladies the room was to be searched.

Q. Now come to the next morning. After you got up, when and where did you first meet Mr. Weichmann?

A. On the morning of ihe 15th I met him in front of the Patent Office. I was reading the Chronicle about six o'clock, and——

Q. Did you accompany him from there to Mrs. Surratt's, or separate from him at that point?

A. I went from there to breakfast.

Q. State if anything passed between you and Weichmann which induced you to keep him under your charge.

The DISTRICT ATTORNEY. I object.

The COURT. You must not state any conversation.

Q. In point of fact, did you lose sight of him from the time of meeting him at the Patent Office, until he was in custody?

A. No, sir. He was in my custody all the time.

Mr. BRADLEY. I now offer to give in evidence what Weichmann said which led the witness to take charge of him.

Mr. PIERREPONT. I object.

The COURT. That comes within my former ruling. It is overruled.

(Exception reserved.)

Q. Were you at breakfast with him?

A. I was.

Q. Do you recollect whether your wife, Mrs. Surratt, Miss Jenkins, and Miss Dean, were all at breakfast that morning or not?

A. I do.

Q. Do you remember at what time Miss Anna Surratt came in—whether she was late or not?

A. We were pretty near, if not quite, through breakfast when she came in. I think we were done breakfast.

Q. Do you know whether she had been unwell the night before?

A. She had been.

Q. That morning, at breakfast, did Mr. Weichmann say to you and Mrs. Surratt that he had his suspicions about this business, and he was going to state what he knew about it to the government?

A. No, sir. He made no such statement.

Q. Did he state he would go and state who he had seen in Booth's company, and do all he could to bring those parties to justice?

A. No, sir.

Q. Please state whether anything was said upon that subject, and, if anything, what was said, and by whom.

Mr. PIERREPONT. I object.

Mr. BRADLEY. We make this proposition on this ground, your honor: The foundation for contradicting Weichmann in the first instance was laid, and, therefore, it, of course, may be introduced for that purpose. A conversation was also proved in which Mrs. Surratt is alleged to have participated. I will read from that portion of Weichmann's testimony:

"Q. You did not see John there that night? A. No, sir. I said to Mrs. Surratt and Mr. Holahan at the table that I had my suspicions about this business, and I was going to the government and state my suspicions about it; state who I had ever seen in Booth's company; and do all I could to bring these parties to justice. Q. Did you go to the government? (Objected to by Mr. Bradley.) The COURT. He may state whether he gave information to the government, but not detail any conversation he had. I went to Superintendent Richards's headquarters. Mr. PIERREPONT. You need not go into particulars. I simply want to know if you did go and give information. Q. You stated that Mr. Holahan was in the house when you went out to give information to the government. What did you, or Mr. Holahan, or Mr. McDevitt, or any of these parties do? A. Mr. Hollahan was with me when I went to the Metropolitan Police headquarters, and stated what he knew to McDevitt. We went to the lower portion of Maryland that day. Q. Who went? A. McDevitt, Bigley, Clarvoe, Mr. Hollahan, and others. Q. Where did you go to?"——

The COURT. I think it is competent for this witness to state whatever was said in reference to this subject, as contained in the answer of the witness Weichmann.

Mr. BRADLEY. As to what Weichmann said?

The COURT. Yes, sir.

Mr. PIERREPONT. We do not object to that.

Q. Was anything said by Weichmann as to his suspicions?

A. If you will allow me I will make a statement of what was said at the table.

Mr. PIERREPONT. No, sir.

WITNESS. What I am going to state will not interfere with either side.

Mr. PIERREPONT. We cannot tell, you know, Mr. Holahan, anything about it. Therefore we want to confine the evidence within the legal rules.

Mr. BRADLEY. I propose to give substantive proof of what the conversation was at the breakfast table that morning. Weichmann has spoken of it.

Mr. PIERREPONT. We have already stated that we do not object to anything Weichmann said on this subject at the breakfast table.

Mr. BRADLEY. I am speaking of the conversation at which Weichmann was present, and in which he took part—a conversation between Mr. Holahan and himself.

WITNESS. I will make my statement, and then you can object to what I have said. (Laughter.)

The COURT. Just state what Mr. Weichmann said.

Mr. BRADLEY. Just start at where he commenced to talk on this subject.

A. I bought a paper, and he read it at the breakfast table.

Mr. PIERREPONT. Never mind that. Weichmann didn't say he read the paper.

WITNESS. I say he did.

Mr. BRADLEY. What did he say then?

A. He said nothing at all.

Mr. BRADLEY. Can I give in evidence your honor what Mr. Holahan said on that subject in his presence?

WITNESS. He made no remarks at all about it.

Mr. BRADLEY. Nor you either.

WITNESS. No, sir.

Q. At that time, and in your presence, did you hear Anna Surratt say that the death of Abraham Lincoln was no more than the death of a negro in the army?

Mr. PIERREPONT. I object. If your honor will look at the testimony on page 334 you will see that that matter was all brought out on cross-examination, and that we never asked a word on the subject. It is a very plain principle of law that they cannot bring out a matter on cross-examination, and then call a witness to contradict what is thus brought out.

The COURT. (After having examined the testimony referred to.) I do not think this testimony ought to be admitted. The testimony of the witness, Weichmann, on this point was an irrelevant and collateral matter, brought out on cross-examination, and therefore the answer must be accepted.

Exception reserved.

Mr. BRADLEY. On page 333 your honor will find the following:

"Q. You have stated that the morning after the assassination you met Mr. Holahan?

"A. Yes, sir.

"Q. Where did you meet him?

"A. At the corner of Seventh and F streets, right in front of the post office. He was coming from the direction of Tenth and F streets.

"Q. Do you recollect what passed between you and him at that time?

"A. We talked together. I told him of my suspicions, and everything else. He told me he thought it was Atzerodt who had assassinated the Secretary of State. We then went round to breakfast.

"Q. Is that all that passed as well as you recollect?

"A. That is all I recollect."

Now, I propose to ask the witness if any such conversation did take place.

Mr. PIERREPONT. I object.

The COURT. That seems to me to be subject to the same objection as the other.

Exception reserved.

Mr. BRADLEY. We start now after breakfast. Where did you go after breakfast—in company with whom?

A. I went away in company with Mr. Weichmann.

Q. Where?

A. We went to the police headquarters—Superintendent Richards's. I there delivered him up, reporting to Messrs. McDevitt and Clarvoe that——

Mr. PIERREPONT. I object to the witness stating what he said to Mr. Clarvoe and McDevitt.

The COURT. You may state the fact of putting him in custody, but you cannot state any conversations that led to it.

Mr. BRADLEY. All we propose is to give the charge on which he was put in custody.

Mr. PIERREPONT. You cannot give it unless you do so in the legal way.

The COURT. I have overruled that.

Exception reserved.

Q. In point of fact, was Mr. Weichmann put in charge of the officer?

A. He was.

Q. From that time forth until as late as the 18th or the 20th of April were you in company with the officers, and was Mr. Weichmann in their custody or not?

A. Yes, sir; he was under arrest all the time.

Q. Did Mr. Weichmann state anything to you about his clothes being in wash at Mrs. Surratt's at that time?

Objected to; objection sustained. Exception reserved.

Q. Go on and give a statement of where you were with Mr. Weichmann from the morning of the 15th and for ten days following.

A. On the morning of the 15th I left Mrs. Surratt's house about seven o'clock. I went down with Weichmann to the office of Superintendent Richards. While we were there the officers took Weichmann down to get horses to take them down in the country. When they came back they had horses. One of the officers, Mr. McDevitt, was unable to ride a horse, and so he went in a wagon, or carryall. When he came back to his office, I told him——

Mr. PIERREPONT. Never mind what you told him.

Mr. BRADLEY. Did you go and get a carriage or a horse?

WITNESS. I went and hired a buggy, having to give $100 security for it.

Q. Did you go with him?

A. I overtook the party five miles below the Eastern Branch; paid for the buggy, and went down as far as Piscataway. Some fifteen or twenty of us met there, Weichmann among the number. I paid the whole bill for dinner.

Mr. PIERREPONT. Never mind about that.

WITNESS. After we left Piscataway we went down five or six miles, and then came back with Messrs. McDevitt and Weichmann. We arrived here between nine and ten o'clock on Saturday night. We drove to the Third ward police-station, near the corner of H. After McDevitt went in there, and was going from there to the station-house, he told Weichmann——

Mr. PIERREPONT. Never mind that.

Q. What did he do with him?

A. He kept him all night in the station-house.

Q. What did you next do after that?

A. At a quarter to ten o'clock McDevitt left the station-house; I told him I would go home. He said——

Mr. PIERREPONT. Never mind what he said.

Q. Was it arranged that you should do anything more?

A. I was to meet him at ten o'clock. I went home and then went and hired a carriage, and went up to Secretary Stanton to get a special train to go to Baltimore.

Q. Did anything happen as you were going up to Secretary Stanton's, or in coming back from there; or did you go back home afterwards?

A. No, sir; I did not go home at all until we got through and found we had failed in our mission. At three o'clock I met McDevitt on Seventh street and H, and went home to Mrs. Surratt's house.

Q. When you went back to the house did you get any clothes?

A. I went to my room at Mrs. Surratt's house, and slept there until Sunday morning. Sunday morning at 6 o'clock I went to the office of Superintendent of Police and there met McDevitt.

Q. Did you see Weichmann there?

A. Yes, sir; he was still there. I was there pretty much all the morning. At 11.15—I think that was the time the train left—we went to Baltimore, Weichmann, McDevitt, and myself.

Q. How long did you stay there?

A. Until Monday morning. We came over from Baltimore on the first train Monday morning.

Q. When did you leave again?

A. Monday evening,

Q. Before you left did you go home again?

A. Yes, sir.

Q. Did you get any articles there?

A. I did.

Q. State what they were.

A. I changed my shirt and got a couple of handkerchiefs off the bed. The washerwoman came in on Sunday morning just about the time my wife was leaving. She did not come on Saturday. The clothes were spread out on the bed, the various articles, shirts, handkerchiefs, &c., being in piles to themselves.

Q. You say you got a couple of handkerchiefs. State if either of those handkerchiefs was marked; and if so, how it was marked.

A. John H. Surratt.

Q. Any number on it?

A. I could not say positively about the number. I did not recognize the number at all.

Q. What was the other mark?

A. Nothing but the name that I recollect.

Q. Was the other one marked?

A. No, sir.

Mr. BRADLEY. One was yours and the other had John H. Surratt on it.

Q. State where you went.

A. At 3 o'clock—it might have been 3.15 when the train left—but before leaving, by the afternoon train, Clarvoe one of the detectives of the Metropolitan police force, went with me to the house to get my overcoat. I thought I might want it on the road, as it was a little cool. While there he saw me take the handkerchief off the bed. We then went to the depot and took the train for Philadelphia. We got to Philadelphia about half past 11 or 12 o'clock. stopped all day Tuesday in Philadelphia, and while there Clarvoe arrested a man by the name of Selistine.

Q. What time did you go to New York?

A. Wednesday morning.

Q. Where from there?

A. Kept on to Canada.

Q. Where did you stay that night?

A. In Burlington, Vermont.

Q. State whether you rested at all in the depot, and if so, at what time?

A. We stopped at the hotel, at Burlington, and got supper, and then went out and bought some things. I recollect buying a shirt, a couple of handkerchiefs and a pair of socks. We then came back and went to bed.

Q. That was the evening of the 20th?

A. It was Wednesday evening, the 19th.

Q. Did you stay there until the morning or not?

A. Yes, sir; I was woke up by the watchman in the hotel. We then went

to the depot. We were either ahead of time, or the train was late; so I laid down on the settee there until the train started.

Q. Was there anybody with you?

A. Weichmann, McDevitt, and Bigley.

Q. Did you afterwards discover that you had lost that handkerchief, and if so, when and where?

A. I discovered at Essex Junction that I had lost it.

Q. Was it the first stopping place after leaving Burlington?

A. I cannot say whether or not it was the first stopping place, but it was just a little after sunrise when we got there, between 5 and 6 o'clock in the morning.

Q. What handkerchiefs or handkerchief did you find you had lost?

A. The way I came to miss it was, I had my tobacco in my overcoat pocket, and in searching for my tobacco, I found my tobacco and handkerchief were both gone.

Q. You found your handkerchiefs were gone?

A. Yes, sir. They were dirty because I had put them in——

Q. Was either of those handkerchiefs marked, and if so how?

A. John H. Surratt.

Q. You then went on to Canada.

A. Yes, sir.

Q. And how long after that was it before you returned?

A. I could not say. I think we were gone ten days altogether. We arrived here Saturday morning.

The court here took a recess for half an hour.

AFTERNOON SESSION.

On the reassembling of the court, the examination of John T. Holahan was resumed.

By Mr. BRADLEY:

Q. I want to understand what you said with reference to that handkerchief whether it had a number on it or not?

A. There was a number on it.

Q. But you cannot recollect the number?

A. No, sir.

Q. You say you obtained that handkerchief from the bed in your room?

A. Yes, sir.

Q. Where was your washing done?

A. I think it was done the last week or two in the house. I am satisfied about that.

Q. Do you know about what time of the week?

A. Monday or Tuesday.

Q. Were you about the house on the Saturday after the assassination?

A. Not after 7 o'clock. I might have been at half-past six on Saturday. I did not enter the house until 10 o'clock Saturday night.

Q. You say that towards morning while you were at Burlington you went into the depot before it was time for the cars to start; that they were detained, or something of that sort.

A. Yes, sir; we waited for the train.

Q. Have you any recollection how long you remained there?

A. It might have been twenty minutes or half an hour.

Q. You say John Surratt was at his mother's on the 3d of April?

A. Yes, sir.

Q. State whether there was any concealment about his being there.

A. No, sir.

Q. Were you confined in Carroll prison at the same time that Weichmann was?

A. Yes, sir.

Q. Did you have any conversation with Weichmann in regard to what had passed between him and Mr. Stanton as to any statement he should make in regard to the assassination?

A. I did.

Mr. BRADLEY. I now offer to give in evidence what was said on that subject. I think I interrogated Mr. Weichmann very fully in regard to the matter.

[Mr. Bradley being unable at the moment to find the examination referred to, it was agreed that he should be allowed to renew the offer at any time before the witness retired from the stand.]

Cross-examined by Mr. PIERREPONT:

Q. Wont you tell the jury what, if anything, occurred in this slight recess that we have had to change your mind in regard to the handkerchief being numbered

A. Nothing has changed my mind. It was numbered but I have no recollection of the number.

Q. Did you have your attention called to the fact as to whether it had a number?

A. No, sir; I know there was a number on the handkerchief.

Q. Have you had your attention called to that?

A. No, sir.

Q. By nobody?

A. No, sir.

Q. Heard nothing at all about it?

A. No, sir.

Q. You have not said a word on the subject, and nobody said anything to you?

A. No, sir.

Q. Before the recess you stated twice, did you not, that it had no number on it?

A. No, sir, I did not state anything of the kind. There was no question asked me about the number at all.

Mr. PIERREPONT. Well, we will leave that to the notes and to the memory of men.

Mr. BRADLEY. Very well.

Q. You now say it had a number on it?

A. There was a number on it.

Q. What number?

A. I do not know.

Q. How do you know it had a number?

A. There was a figure on it; I could not state what it was.

Q. What besides a figure?

A. There was something after the name.

Q. What was it? Was it n-u m-b-e-r?

A. No, sir; I did not see any n-u-m-b-e-r on it.

Q. Was there a N-o?

A. I do not know what it was. I know there was a figure after the name.

Q. Was there a N-o before the figure?

A. I do not know; I do not know anything about it; there was something after the name, but I do not know what it was.

Q. Was it following it on the same line, or immediately under it?

A. It was on the same line; I think so.

Q. Didn't you say that Weichmann was arrested?

A. I did.
Q. Who arrested him?
A. He was put under arrest by McDevitt and Clarvoe.
Q. Where?
A. Both were standing on the steps of the Metropolitan Police headquarters.
Q. Did they tell him they arrested him?
A. No, sir.
Q. Did he know he was arrested?
A. He did not know it until quarter to ten on Saturday night.
Q. Do you know how he found it out?
A. After leaving the third ward police station on Saturday night, McDevitt told him he would have to go to the police quarters and stay all night; that he was under arrest. I knew it in the morning.
Q. That was the first Weichmann knew of it?
A. Yes, sir.
Q. Were you under arrest?
A. No, sir.
Q. You went with Mr. Weichmann to Canada?
A. I did.
Q. Were you in his charge?
A. I do not think I was.
Q. Did you ever see that paper before? (Handing witness an order constituting himself, Weichmann, and McDevitt special officers of the War Department.)
A. I have seen the original. That is not correct; my name is spelt wrong.
Mr. PIERREPONT. This is a certified copy.
Q. With the exception you speak of, it is right?
A. I think it is.
Q. Then you and Weichmann were specially detailed together?
A. Will you allow me to make an explanation?
Mr. PIERREPONT. Will you answer my question? I will repeat it. State whether you went in obedience to this order.
A. I did.
Mr. BRADLEY. Now you can explain.
WITNESS. On Monday morning after we came back from Baltimore—McDevitt, Weichmann, and myself—McDevitt went to, I think it was, Colonel Baker's, and got transportation.
Mr. PIERREPONT. That is not explaining this order.
A. Yes, sir, as you will see in a moment. He went and got transportation. If he had told Baker and the provost marshal that Weichman and myself had boarded in that house, we would never have gone to Canada. He represented to the department that he wanted us to go with him.
Mr. PIERREPONT. Are you through with the explanation? If you are, I will proceed with the examination.
WITNESS. Well, go ahead.
Q. Did you go under this order with Weichmann?
A. I did.
Q. And he with you?
A. Yes, sir.
Q. Where did you go?
A. We went from here to Baltimore, and from Baltimore to Philadelphia, and stopped in Philadelphia on Monday night.
Q. You told us on the direct examination that you went back to the house before you left, and got a handkerchief?
A. That was on Monday.
Q. What time of day?

A. Between one and three o'clock—just before leaving for the cars; about two o'clock.

Q. What time did you take the cars on Monday?

A. The three o'clock train; it might have been 3.15.

Q. Where did you go to get these clothes of which you have spoken?

A. In my room.

Q. Where were the clothes?

A. Spread on the bed.

Q. Do you know how long they had been there?

A. I think they were brought in on Sunday morning; they must have been, because the bed was made up.

Q. What morning was this?

A. This was evening.

Q. The evening of what day?

A. Monday.

Q. You had slept there Sunday night, hadn't you?

A. No, sir.

Q. Hadn't your wife?

A. No, sir. My wife left Sunday morning.

Q. Do you know when the clothes were put there?

A. It must have been on Sunday morning.

Q. Why must it have been?

A. Because when my wife left early on Sunday morning and went to her mother's, the bed was made up, and when I came back——

Q. When you left the clothes were not on the bed?

A. No, sir; I guess not.

Q. They were on Monday, in the afternoon?

A. Yes, sir.

Q. Was not that the first time you ever saw them on the bed?

A. It was.

Q. You do not know whether they had been placed there five minutes or two days before you got them?

A. They had been placed there between Sunday morning and the time I got them.

Q. For aught you know, they may have been placed there two minutes before you got them?

A. Possibly.

Q. After you got these handkerchiefs, what did you do with them?

A. Put them in my pocket.

Q. What did you do next?

A. Went north.

Q. What was the first place you went to?

A. The cars.

Q. What time did the cars leave?

A. About three o'clock.

Q. Where did you go on Monday afternoon?

A. I have just told you I went to the cars.

Q. After you got to the cars where did you go?

A. Went on to Philadelphia.

Q. That night?

A. Yes, sir.

Q. You did not stay in Baltimore that night?

A. No, sir.

Q. You are sure about that?

A. Positive.

Q. Who was with you?

A. McDevitt, Clarvoe, Bigley, and Weichmann.
Q. What time did you get into Philadelphia?
A. About half past eleven.
Q. Where did you go to then?
A. To a hotel, corner Eleventh and Market streets.
Q. Did you all go together?
A. Yes, sir.
Q. Did you stay there that night?
A. We did.
Q. What did you do the next day?
A. Clarvoe arrested a man by the name of Selinstine.
Q. What did you do?
A. I was in company with Clarvoe the whole morning.
Q. Did you go out of the city of Philadelphia the next day?
A. No, sir.
Q. Where did you sleep on Tuesday night?
A. We did not sleep anywhere Tuesday night; on the cars, if anywhere.
Q. What time did you leave Philadelphia?
A. I think about twelve midnight, or somewhere along there.
Q. Midnight of what night?
A. Tuesday night; whatever time the train leaves.
Q. Where did you go?
A. To New York.
Q. When you got to New York what time was it?
A. It was daylight.
Q. Then you got to New York on the 19th, didn't you?
A. Yes, sir
Q. Wednesday, the 19th?
A. Yes, sir.
Q. What did you do when you got to New York, on Wednesday, the 19th of April?
A. We took something to eat.
Q. When did you leave there?
A. In the morning, at seven o'clock.
Q. Where did you go?
A. Up the Hudson river road.
Q. To what point?
A. We did not go to any point, because we were going to Canada.
Q. Where did you stop that night
A. Burlington.
Q. Then you got to Burlington that night?
A. Yes, sir; on the night of Wednesday, the 19th of April.
Q. You were all together there?
A. Yes, sir.
Q. Where did you go there?
A. Went to a hotel. I do not know what the name of it was.
Q. Did you enter your names?
A. We did.
Q. Did you enter your own names, or false ones?
A. Mr. Bigley, I think, entered the names. He entered false ones.
Q. You all travelled under assumed names?
A. Yes, sir.
Q. What were those names?
A. I remember Bigley's name was Porter.
Q. What was your name?
A. I do not remember. McDevitt's name was McGue.

Q. What was Weichmann's name?

A. I have no recollection. One name was Thompson, I do not know whether that was my name or Weichmann's.

Q. At what time did you go to the hotel?

A. It was about dark, or after dark.

Q. What did you then do?

A. We got supper, washed, and went out, and got a shirt; I bought a shirt for Weichmann.

Q. Who went with you?

A. I won't be certain whether Bigley or McDevitt went with me.

Q. What time did you and Bigley return to the hotel?

A. We had not been out more than an hour.

Q. What time did you go to bed?

A. We went to bed as soon as we returned.

Q. Do you remember the number of your room?

A. I could not say.

Q. Who slept in the room with you?

A. That I could not say.

Q. Cannot you tell which of your number?

A. No, sir; because I made no memorandum of it.

Q. One of them did?

A. Yes, sir.

Q. Didn't two?

A. I cannot say whether one or two.

Q. Where did you have that handkerchief that night?

A. I guess I had it in my overcoat pocket.

Q. Where did you have it the next morning when you dressed yourself?

A. I guess in my overcoat pocket.

Q. That was the morning of Thursday, the 20th, was it not?

A. Yes, sir.

Q. Then you think that handkerchief was in your overcoat pocket on Thursday, the 20th?

A. It was.

Q. You are positive, that on Thursday, the 20th, it was in your overcoat pocket?

A. I am.

Q. You took the cars that day?

A. Yes, sir.

Q. And went to Essex Junction?

A. I did.

Q. Was it there you discovered the loss of the handkerchief?

A. It was.

Q You knew you had it in the morning?

A. I knew I had it the night previous in my overcoat pocket. I know it because my fobacco was in my overcoat pocket.

Q. The tobacco makes you positive about the time?

A. Yes, sir.

Q. When you got to Essex Junction, how did you happen to find out it was gone?

A. Well, there was a house about two hundred yards from the Junction, and I had asked some of the men on the cars if it was not a drinking house, and invited some of them to go and get a drink. It was early in the morning, and not feeling well, I went up and got a drink.

Q. Who went with you?

A. I went alone.

Q. What time in the morning did you get the drink?

A. Between four and five o'clock.
Q. After sunrise?
A. Early in the morning.
Q. What then happened after you got the drink?
A. I wanted a chew of tobacco. When I came back, and got my overcoat from these parties who were with me, and who had charge of it, I searched in the pockets, but there was no tobacco nor any handkerchief.
Q. How much tobacco had you in it in the morning?
A. I guess I had what we call three ten cent plugs.
Q. Was the handkerchief wrapped around it?
A. No, sir.
Q. Were they both in the same pocket?
A. Yes, sir.
Q. You supposed they both fell out?
A. Yes, sir.
Q. What sort of weather was it early in the morning, on the 20th?
A. It was a clear morning, but pretty cool where we were, in Vermont.
Q. Did you wear your overcoat?
A. No, sir; I had thick winter clothes on, and therefore I had no need for it.
Q. Was there anything else in the pocket, on the morning of the 20th, except this tobacco and the handkerchief?
A. No, sir.
Q. Have you ever seen that handkerchief since?
A. No, sir.
Q. Do you think you would know it if you were to see it?
A. Possibly I might recognize it.
Q. You are sure about the date?
A. I am as positive as I am that I am now looking at you.
Q. Where did you go after you had left there on the 20th of April?
A. We continued on our road to Canada.
Q. At what time did you get to Canada?
A. It was early in the afternoon; I think it might have been one or two o'clock.
Q. What hotel did you go to?
A. I think to the Oswego—some such name as that. There are only three hotels there of any account.
Q. You know Mr. Bigley well, don't you?
A. Yes, sir.
Q. Is he in the army?
A. I do not know; he may be.
Q. Did you tell Mr. Bigley that you lost that handkerchief at St. Albans?
A. No, sir.
Q. You did not, at any time, tell Mr. Bigley that you lost it at St. Albans?
A. No, sir.
Q. Did you know Weichmann well, who was with you?
A. I knew him well.
Q. Did you tell him you left it under your pillow, at the hotel?
A. No, sir; it is a falsehood.
Q. You did not tell him so at that time?
A. No, sir; it is a falsehood.
Q. It is a falsehood, is it? What is a falsehood?
A. It is a falsehood, my leaving that handkerchief under the pillow.
Q. I did not ask you whether you left it. I asked you if you said you did?
A. I did not say I did.
Q. Were you with Mr. Weichmann all the time in Canada?
A. No.
Q. Were you and Clarvoe and Bigley with Weichmann in Canada?

A. Clarvoe did not go to Canada when we first went there.
Q. Then neither you nor Clarvoe were in Canada with Weichmann?
A. Yes, Clarvoe was. He came there after we were there.
Q. Were you and Clarvoe with Weichmann at any time?
A. No. I was with Weichmann and Bigley at one time.
Q. Did not Weichmann go to Quebec?
A. Yes.
Mr. BRADLEY. Is not that hearsay.
WITNESS. I know he went; that is, I know they left to go to Quebec. I went to Three Rivers with a detective from Montreal.
Q. You were examined before, were you not?
A. At the penitentiary I was.
Q. At the trial of the conspirators?
A. Yes, sir.
Q. Let me read to you from a report of that trial: "The last time I saw him, [referring to Surratt] was on the night of the third of April, the day on which the news of the fall of Richmond was received." You said that?
A. I did, sir.
Q. "He knocked at the door of my room at about ten o'clock, after I was in bed, and wished me to exchange some gold for greenbacks." Did you say that?
A. The way of it was this: they would not allow me to make my statement there on that trial.
Q. I did not ask you about that. I ask you whether you have said what I have read?
A. As I was saying to you——
Q. You must stop and answer my question. My question simply is, did you say this, as I have read it, on the trial?
A. Yes; but I want to explain it in this way.
Q. You said what I have read, did you?
A. Yes; but I want to explain.
Q. Well, now what do you want to say?
A. I want to put in this: they would not allow me to make my statement. They put questions there, whatever they chose to ask. Surratt came to my room door and wanted to see me. I put my pants on, and went into the room where Mr. Weichmann was. He had his shirt off, and was undressed. Surratt said to me "Have you any money with you." I said "I have. How much do you want?" He said "I want fifty dollars." I said you can have it. I went to my room and got it, and gave him fifty dollars, and asked him if that was enough. He said he would like to get ten dollars more. I got ten dollars and gave it to him; and just as I was going out in the passage he handed me two twenty-dollar gold pieces, and insisted on my taking it. I did not want it.
Q. Is that all you want to say?
A. That is all just now.
Q. Now, is this what you said down at the arsenal: "I gave him sixty dollars in paper for forty dollars in gold. He said he wanted to go to New York, and that he could not get it exchanged in time to leave by the early train in the morning?"
A. Yes, I said that.
Q. Is that true?
A. Yes, sir.
Q. "I never knew anything of Mrs. Surratt's defective eye-sight, while I lived with her"
Mr. BRADLEY. We have not asked the witness anything about Mrs. Surratt's defective eye-sight.
Mr. PIERREPONT. Very well. I do not care to press it.

Mr. BRADLEY. Why did you ask it then?

Mr. PIERREPONT. I asked him whether he said that in the other trial. I read again from that trial: "While there I saw Atzerodt several times, though I did not know him by that name. He seemed to be with John Surratt most of the time." Did you say that on that trial?

A. I did.

Q. Was it true?

A. It was true. I saw Weichmann with the whole party.

Q. "I also saw Payne there at breakfast. The name by which I knew him was Wood. John Wilkes Booth, I have seen frequently. I have seen him in the parlor with Mrs. Surratt and the young ladies." Did you say that?

A. I did.

Q. Was that true?

A. Yes, it was true.

Q. In your direct examination, you told us about a "mission" that you said you had up at the office of the Secretary of War. "Mission" was the word you used, was it not?

A. I do not recollect using any such word.

Q. Do you remember or not about going to the office of the Secretary of War on a certain Saturday night?

A. I do.

Q. Did you use the word "mission" in that connection? And did you say you failed in it?

A. We failed to get an engine for a special train to go to Baltimore.

Q. Was that what you alluded to?

A. I think it was.

Q. What were you going to Baltimore for?

A. It was at the suggestion of McDevitt.

Q. What were you going to Baltimore for?

A. McDevitt was going there, thinking that possibly Atzerodt and other parties would be in Baltimore.

Q. What parties?

A. Atzerodt and parties.

Same question repeated three times, with same answer.

Question again repeated.

A. Booth and Payne.

Q. Anybody else?

A. No.

Q. When you were so reluctant in naming what parties, did you mean Surratt. The parties in Baltimore did not comprehend Surratt?

A. I do not understand that.

Mr. PIERREPONT. I presume that I shall hardly be able to put it in language that you will be able to understand.

WITNESS. If you will put it in different language perhaps I may understand it.

Q. If you do not understand that, I do not think I will be able to make myself understood. Will you tell us when you got back from Canada?

A. Saturday morning.

Q. What day of the month?

A. I have no recollection of the day of the month. It was about eight or ten days after the assassination. It was on Saturday morning. I recollect distinctly.

Q. Do you recollect what day of the month?

A. I have just told you, Saturday morning.

Q. How many days after you left here?

A. It was about ten days—eight or ten.

Q. You speak of being in prison, what were you in prison for?

A. That is more than I am able to say; Secretary Stanton will be able to answer you that better than I can.

Q. You do not know?

A No.

Q. When you went to the depot that morning from Burlington, the others went along with you?

A. No, sir.

Q. None of them?

A. None of them.

Q. You went alone?

A. I went alone.

Q You went alone that morning?

A. I did, sir; positively.

Q. Who at the hotel with you staid behind?

WITNESS. What hotel?

Mr. PIERREPONT. The hotel at Burlington.

WITNESS. Staid back?

Mr. PIERREPONT. Yes; who staid back when you went alone?

WITNESS. I do not think you have got the right point.

Mr. PIERREPONT. May be not.

WITNESS. I do not think you have. I think your informer has not given you the right point. I can put you right.

Mr. PIERREPONT. Just wait a moment; you will have to put yourself right. Now you will have to answer my questions.

WITNESS. Very well; you must put your questions to me.

Mr. PIERREPONT appealed to the court to direct the witness to answer questions. He wished to know whether the witness could be allowed to tell him he had got the wrong point, and that his informer had got the wrong point.

The COURT directed the witness to answer questions as they were put, and to make whatever explanation he found necessary afterwards.

Mr. BRADLEY remarked that the other day the court reproved the counsel for the manner in which they cross-examined witnesses. He thought no witness had been cross-examined in a way more to provoke him than this.

The COURT said he could not see anything calling on him to reprove counsel. The witness must answer the questions put to him.

Q. Now, will you tell me when you left the hotel in Burlington, who you left behind of your party?

A. I did not leave anybody behind.

Q. Did they all go with you?

A. No; they did not.

Q. Did anybody go with you?

A. One.

Q. Who?

A. I will not be positive whether it was Bigley or McDevitt. One went with me, and one went with Weichmann. They separated.

Q. Did not Bigley go with you?

A. I think it was Bigley.

By Mr. BRADLEY:

Q. Tell the jury how many pockets your overcoat had in it.

A. Six.

Q. In which pocket was the tobacco and the pocket handerchief?

A. The right-hand outside pocket.

Q. When you picked up the handkerchief were you aware that it had a name on it?

A. I was. Clarvoe said to me, "You keep that handkerchief; you will want to use it." He made a remark something of that kind.

Q. You have been asked if you would recognize that handkerchief again. Please look at that, (handkerchief heretofore placed in evidence exhibited) and say if you think that is the same.

A. That is the handkerchief, sir.

Q. Now, state to the jury by what you identify that as the handkerchief; state whether you carried it in your pocket and made some use of it.

A. Yes, sir. I used it the same as my own handkerchief until it became very dirty.

Q. You observed that handkerchief. Now, is the number where you supposed it to be or not?

A. It is under the line.

Q. Not at the end of the line, as you supposed?

A. No.

Q. You were asked if you told Weichmann that you left it under your pillow at the hotel. You say you did not tell him so Did you at any time state to Weichmann that you had lost that handkerchief?

A. I never stated to him anything about it. The only statement I made was in Montreal. McDevitt and Clarvoe told me——

Mr. PIERREPONT. You need not state what they said.

Mr. BRADLEY. Do not state what they said. I ask you if you communicated to any one the loss of that handkerchief; and if so, when it was, and where?

A. I did not communicate it to anybody until they told me it was found. A party told me it had been found, and then I said I had lost it.

Q. That was after you reached Montreal?

A. Yes, sir; that was after we came back from Three Rivers.

Q. The counsel read to you from your examination before the military commission as to whether you had ever seen Payne or not. Did you ever know him by any other name than Wood?

A. No, sir.

Q. While you were in the house you met him there?

A. At breakfast.

Q. Did you see him about the house at any other time than at breakfast?

A. No, sir.

Q. Do you recollect about what period of time it was—how long after you went to board at Mrs. Surratt's?

A. It may have been two or three weeks. I do not recollect the time.

Q. Was that the only time you ever saw him at that house?

A. The only time.

Q. You never knew him by any other name than Wood?

A. I did not. It was Weichmann who introduced me.

Q. And he introduced you as Wood?

A. Yes, sir.

By Mr. PIERREPONT:

Q. Where did you first mention the loss of that handkerchief to anybody?

A. In Montreal.

Q. What day?

A. I cannot locate the day.

Q. Do you remember the day of the week?

A. No, sir.

Q. Do you remember the day of the month?

A. No, sir.

Q. Do you remember the person to whom you told it?

A. Yes.

Q. Who?

A. McDevitt.

Q. Please look at the handkerchief and see if the number is on the same line with the name.

A. I do not think it is. I can see from this distance.

Q. Is this the handkerchief that you lost?

A. That is asking too much of me.

Q. A little too much, I suppose.

A. I cannot say positively that I had this handkerchief there; but I think this is the one.

JOHN A. W. CLARVOE, detective, metropolitan police, sworn and examined.

By Mr. BRADLEY:

Q. State to the court and jury whether you were at the house of Mrs. Surratt on the night of the 14th of April; and if so, at what time you got there, and who went with you.

A. I should judge at about half-past two o'clock on the night of the 14th of April, in company with my partner, Lieutenant Skippon, detective Donaldson, and an officer by the name of Maxwell, and several others I do not now recollect; and we went to the house of Mrs. Surratt on H street.

Q. Was that in response to information you had received, and for what purpose did you go?

A. I went for the purpose of capturing Booth, and also to arrest John H. Surratt.

Examination of witness suspended at this point.

ELIZA HOLAHAN, wife of John T. Holahan, sworn and examined.

By Mr. BRADLEY:

Q. State whether you boarded at Mrs. Surratt's in the year 1865.

A. I did, from the 7th of February until the 17th of April.

Q. During that time did you mingle socially in the family of Mrs. Surratt, or keep yourself exclusive?

A. I mingled with them freely, met them at any time and at all times

Q. Do you recollect to have seen there at any time Mr. Weichmann, and whether he was a boarder or not?

A. He was a boarder in the house while I was. He was there when I first went there to board.

Q. Did you at any time see him and a man by the name of Atzerodt?

A. I saw a person who came to the house. I did not know him by that name. They called him Port Tobacco. His familiar name was Port Tobacco.

Q. State whether you observed any intimacy between him and Mr. Weichmann

A. I saw him oftener with Mr. Weichmann than with any member of the household.

Q. Had you ever seen them go from the house or come to the house together?

A. Yes, sir; on two occasions I saw them go and come.

Q. Did you know anything of Atzerodt wearing Weichmann's clothes at any time?

A. I remember once seeing Atzerodt leave the house with Weichmann's cloak and hat on—a tall black hat and military cloak.

Q. During that time did you ever see a man by the name of Herold there?

A. Never.

Q. Did you see John Wilkes Booth?

A. Yes, sir; I saw him there two or three times.

Q. Did you ever see a man there by the name of Payne or Wood?

A. I met a man calling himself Wood; I never knew him by the name of Payne. I never heard of him by that name until after the assassination.

Q. In the latter part of the time you were there where did you have your washing done?

A. In the latter part of my stay in the house we had it done by Mrs. Surratt's washerwoman.

Q. At what time did you put out your clothes to wash?

A. On Monday morning, generally, and they were delivered to us on Wednesday.

Q Do you remember on the day after the assassination of the President whether there was any washing done in the house that day, or the day before?

A. On the day after the assassination I think there was none done. I am sure that I had no washing done after the assassination, and that I put out no clothes to wash until the Monday following.

Q. When did you go home?

A. I went home on Sunday at 2 o'clock and returned on Monday and remained until after 12 or 1 o'clock. That morning I put out my clothes to wash.

Q. Do you remember whether on Sunday or Monday your clean clothes you had received from the wash were put away, or whether they were left lying on the bed?

A. My clean clothes were put away.

Q. You were at home at Mrs. Surratt's on the 3d of April, the day of the news of the surrender of Richmond?

A. Yes, sir.

Q. Did you see Mr. John Surratt that night?

A. I did not see him; I heard his voice. He knocked at our door and asked Mr. Holahan to come to the door.

Q. Had he not been absent some days before?

A. He had; some six or eight days, I believe. It might have been longer; I think it was.

Q. Did you see him when he left there prior to the 3d of April?

A. Yes, sir.

Q. Who went with him and how did he go?

WITNESS. On his visit to Richmond, do you mean?

Mr. BRADLEY. Yes; at that time.

A. I think he left in company with his mother and another lady, in a carriage, with a white and dark horse.

Q. A buggy and two horses?

A. Yes, sir; two horses and carriage.

Q. Were you at home on the 14th of April?

A. I was.

Q. Were you at home when Mrs. Surratt arrived that afternoon?

A. I was.

Q. Now please to state to the court and jury what occurred immediately after Mrs. Surratt's arrival on Friday afternoon from Surrattsville?

A. I did not see Mrs. Surratt for some time after she returned; some ten or fifteen or twenty minutes. Then I called her and asked her if she was ready to go out. She had promised that morning to go to church that night. She said she was, and took her bonnet and shawl and put them on, and we went as far as Dr. Evans's house, two doors above Mrs. Surratt's. The adjoining house was Mr. Sweeney's. I remarked that it was a heavy, disagreeable night, and suggested that we did not go. She said "well," and we returned together back to the porch and staid some five or ten minutes, when I went to my room and Mrs. Surratt went to the parlor. I did not see her after that.

Q. After you went to your room and Mrs. Surratt went to the parlor, you did not see her again till when?

A. Until the next morning, about 7 or half-past 7 o'clock; I am not sure about the hour. It was some time before we had breakfast.

Q. And you did not see her during the night when the officers were there making their search?

A. I did not see her until the next morning.

Q. At breakfast, do you remember what time Miss Anna Surratt came in?

A. She came in late; when we were nearly through. She went to bed the evening before—or left the parlor—the first one, and she did not enter the breakfast room until we were nearly through breakfast.

Q. Was Weichmann at breakfast?

A. He was.

Q. Did you hear Weichmann, while at breakfast, say to Mrs. Surratt and to Mr. Holahan, at the table, that he had his suspicions about this business and was going to the government and state his suspicions about it; state who he had ever seen in Booth's company, and do all he could to bring these parties to justice?

Mr. PIERREPONT asked whether that was a proper question

Mr. BRADLEY replied that it was; that the witness Weichmann stated that this conversation took place in the presence of Mrs. Holahan, Mr. Holahan, Miss Jenkins, and Miss Dean, at breakfast, and read from the report of Weichmann's testimony, in which he stated that this conversation was in the presence of Mrs. Holahan, at the breakfast table.

Mr. PIERREPONT said he did not object to the question.

Question repeated.

A. No, sir; I never heard any such expression made use of.

Mr. BRADLEY said he understood that under the ruling of the court he was not permitted to inquire whether any such remark as was imputed to Anna Surratt was made

The COURT replied, he was not.

Q. I understand you to say you did not go into the parlor after you returned from your walk with Mrs. Surratt that night. Now can you state with any confidence at what time in the evening you and Mrs. Surratt went out?

A. I should suppose it was about 9 o'clock, or it might have been later than 9; probably about a quarter past 9.

Q. Did you observe anything in her manner to excite your surprise at all or to attract your attention?

A. No, sir; I did not; she seemed as calm as ever I saw her in my life.

Q. You observed no nervousness; hurried, excited manner?

A. None at all.

Q. You say you went out that evening intending to go to church; state whether you had ever been to church with her before, and what her habit was as to going to church

Question objected to by Mr. Pierrepont, on the ground that general habits could not be shown.

Mr. BRADLEY said he offered the evidence to prove the general good character of Mrs. Surratt.

The COURT said that the matter of people going to church he did not think proved anything about character, so far as his experience went.

Mr. BRADLEY said, then he would put the question in this way:

Q. While you lived at Mrs. Surratt's had you opportunities of learning her character?

(Question objected to by Mr. Pierrepont as immaterial; Mrs. Surratt was not on trial. Objection sustained, and exception to ruling reserved by counsel for the defence.)

Q. I ask you whether you know anything of Mrs. Surratt having a defective eyesight?

A. I do not think her eyesight was very good. I have often been called to thread needles for her and to read notes. I never saw her read or sew after daylight.

Cross-examined by Mr. PIERREPONT:

Q. At what time did church begin on this Friday night in April?

A. About half past 7.

Q. You state that Mrs. Surratt and yourself started out to go to church at 9 o'clock or a quarter after; how many houses did you pass towards the church before you turned back?

A. Two.

Q. And when you came back you went to your room?

A. I staid in the door-way after, a few minutes; then I went to my room and Mrs. Surratt went to the parlor.

Q. And you saw her no more until the next morning?

A. No, sir.

Q. Did you know about your husband going to the theatre a while before that?

A. I think Mr. Holahan was down town one night, and went to the theatre.

Mr. BRADLEY. You did not go with him?

A. I did not.

By Mr. PIERREPONT:

Q. Then you do not know about it of your own knowledge?

A. No, sir.

Q. You spoke of a lady who went away with Mrs. Surratt; who was that lady?

A. I do not know her name.

Q. Did you ever see her before?

A. No, sir.

Q. Have you ever seen her since?

A. No, sir.

Q. Did Mrs. Surratt tell you who she was?

(Question objected to by Mr. BRADLEY, on the ground that the court had already ruled that what Mrs. Surratt said could not be given in evidence. Objection sustained.)

A. I said that Mr. Surratt left home on the 3d of April, and that he was accompanied by his mother and a lady; that they went in a two-horse carriage.

Q. And you cannot tell me who the lady was?

A. No, sir.

Q. Did Mrs. Surratt tell you who she was?

(Question again objected to by Mr. Bradley, and objection sustained.)

Q. You say Surratt returned on the 3d of April; was this six days before that?

A. Yes, sir.

Q. Now tell us when you put your clothes in the wash at the time you have been asked about.

A. We put our clothes in the wash on Monday.

Q. This murder of the President having occurred on Friday night, did you put out your clothes on the next Monday?

A. I did. I left Mrs. Surratt's on Sunday, and returned next morning and put them out to wash.

Q. Do you know when they came out of the wash?

A. I do not know anything further about them. I never saw them again for three or four weeks.

Q. When you left, the clothes that had been washed, you say, had been put away?

A. I do not recollect anything about it. We found them some up stairs and some down stairs.

Q. When did you see the clothes you put in the wash on that Monday, again?

A. Never until I was allowed permission to go and get my clothes from Mrs. Surratt's house.

Q. How long afterwards?

A. I presume some fourteen days. It may have been more.

Q. Were you examined on the conspiracy trial?

A. Yes, sir.

Q. On that trial let me call your attention to what you are reported as having said. Did you state this: "I boarded with Mrs. Surratt from the seventh of February until two days after the assassination. I know the prisoner at the bar, who called himself Wood. [Payne.] I saw him at Mrs. Surratt's in February, and the second time I think about the middle of March. He was introduced to me as Mr. Wood, but I never exchanged a word with him on either visit. I asked Miss Anna Surratt who he was, and she said he was a Mr. Wood, a Baptist minister. I said I did not think he would convert many souls. He did not look as if he would."

A. I did.

Q. I read further: "I have seen the prisoner Atzerodt at Mrs. Surratt's, though I never heard of him by that name. He called himself and the young ladies called him Port Tobacco. I saw him come in at times and he dined there once or twice." Did you state that?

A. Yes, sir.

Q. Further on: "I have seen John Wilkes Booth at Mrs. Surratt's three or four times. When he called he spent most of his time in company with Mrs. Surratt, I believe. He would ask for Mr. John Surratt, as I understood." Did you state that before the military commission?

(Question objected to by Mr. BRADLEY as not in response to direct examination.)

Mr. PIERREPONT insisted on the question, and said he had a right to ask her whether this was what she said on the former trial.

(Objection overruled.)

A. Yes, sir; about that.

Q. State what church you started to attend that night.

A. Saint Patrick's church.

Q. How far was that from the house?

A. I suppose about five squares.

By Mr. MERRICK:

Q. How long did the services in that church continue on Good Friday night?

A. Generally until ten o'clock or after. The services are prolonged on Good Friday night.

By Mr. BRADLEY:

Q. I ask you whether on this same trial to which the gentleman has referred you did not testify as follows, in speaking of Atzerodt: "I saw him come in at times, and he dined there once or twice. I heard Mrs. Surratt say she objected to Mr. Atzerodt; she did not like him—and that she would rather he did not come there to board."

A. Yes, sir; that was my statement.

ELIZA HAWKINS, (colored,) sworn and examined.

By Mr. BRADLEY:

Q. Were you ever called Rachel?

A. Yes, sir; that was my name. They called me Eliza for short; it has been so long since they called me Rachel that I am not called that at all now.

Q. Do you know Susan Ann Jackson, who lived at Mrs. Surratt's?
A. Yes, sir.
Q. What was her name then?
A. Susan Ann Mahony.
Q. But now it is Jackson?
A. Yes; she was not married when I saw her. Her name then was Susan Mahony.
Q. Do you recollect the night when the President was murdered?
A. Yes, sir; Good Friday night.
Q. How long after that was it before you saw Susan Mahony?
A. I saw her Tuesday morning. Mrs. Surratt was taken to prison on Monday night. I saw her on Tuesday morning.
Q. Where were you living at that time?
A. I was living with Mr. John Lloyd, at Surrattsville, and I came to see my children and Mr. Wildman and his family. I used to belong to him. I came up on Good Friday to take my Easter holiday. I always do it.
Q. When you saw Susan, did you have any talk with her about John Surratt?
A. Yes, sir.
Q. What did she tell you about John Surratt?
(Question objected to by Mr. Pierrepont. He did not understand that when Susan Ann Jackson was cross-examined that Eliza Hawkins and Rachel Seavers were the same person.)
The COURT said he understood distinctly that they referred to the same person, and that he thought the witness so understood.
A. She was talking about her having such bad luck in losing homes; that she was afraid she would not get her money. She said she had been living at Mrs. Surratt's two weeks, but that she thought she might get her pay. I said Mrs. Surratt would pay her if it took the last cent she had. She said the night the President was killed they came there and searched the house, and that she heard talk about Mr. Surratt; that when she first came there Mr. Surratt was there, and Mrs. Surratt asked her if he did not look very much like her daughter. She said she had not seen him since, and that was about two weeks before; that she went in where he was, to take in a pot of tea. That is before God what she told me. I would not say it if it was not true.

Cross-examined by Mr. PIERREPONT:

Q. At what time did you leave Mr. Lloyd's house?
A. After dinner.
Q. Did you know Mrs. Surratt?
A. I lived with her six years.
Q. Were you a slave at the time?
A. Yes, I was always a slave.
Q. Were you the slave of Mrs. Surratt?
A. I was hired to Mrs. Surratt. Mr. Wildman, my master, hired me.
Q. And you came up to see her that night?
A. I came up to see her, to see my children, and to see Mr. Wildman's family.
Q. You went to her house?
A. I did not go that night; I went to Mr. Wildman's. I went to her house Tuesday morning.
Q. That was the first time you went?
A. It was.
Q. Where did you see Susan?
A. I saw her that morning when I went there. I staid there all day. My little child was there, and after I found the soldiers were there I wanted to take her away. I staid until 8 o'clock, and then with Susan Jackson and the colored man, whom I suppose she married, I went down to the provost marshal's.

Q. Was the colored man she married there when you came there on Tuesday?
A. No, sir; he came there in the day. The soldiers said that anybody who came in the house could not go out. Miss Anna Ward came there, and another young lady with her; and they had to stay.
Q. Did the soldiers come in while you were there?
A. They were there when I went there.
Q. At what time in the morning?
A. After breakfast. The soldiers were there then, and they were passing in and out all day.
Q. Did they say anything to you about your staying there.
A. They told me I had to stay. I wanted to go away, but they would not let me. I staid until eight o'clock that night.
Q. How did you get away?
A. They carried me down to the provost marshal's.
Q. And then they let you off? Who carried you there?
A. They were two soldiers. I do not know who they were.
Q. Susan told you that Mrs. Surratt said John looked like Anna?
A. She said he looked very much like Anna.
Q. Did you know Anna?
A. Certainly, I knew Miss Anna Surratt. I had been living in the house six years.
Q. You knew them all?
A. Yes, sir.
Q. You were attached to them?
A. Very much attached to them. I would have been with them till this day if I could.
Q. You are very much attached to them to this day?
A. Yes, sir, very much attached to them.
Q. Your feelings are strongly interested in them?
A. Oh, yes, sir; they treated me right; I certainly had a right to be so.

By Mr. BRADLEY:

Q. But your feelings are not strong enough to make you tell a lie about it?
A. No, sir; before God, I want to tell the truth.
Q. You say you lived with Mrs. Surratt for six years down at Surrattsville, now I want you to tell me how Mrs. Surratt behaved when the Union soldiers came there.
(Question objected to by Mr. Pierrepont as not relevant. Mr. Bradley said his offer of proof was that Mrs Surratt fed and sustained the Union soldiers and furnished them with everything she had when at her house. Objection sustained. Exception to the ruling reserved by counsel for the defence.)

By Mr. PIERREPONT:

Q. State to the jury when you first told anybody about this matter?
WITNESS. About Susan Ann Jackson and what she told me?
Mr. PIERREPONT. Yes.
A. I went on the Island and told my young mistress about it as soon as I got there.
Q. When was that?
A. It was the very night I got there. I do not know what day of the month it was.
Q. Who was young mistress?
A. She married Henry Quinn.
Q. Who have you told since this trial commenced about it?
A. I heard them read about it in the papers what Susan said, and told them Susan certainly could not have said that; she could not have sworn to such a thing as that.

Q. Did you say that to several people?
A. I said it to every one who read the papers to me.
Q. Who did you say it to first?
A. The first one I said it to was the man who lived with Mr. Barry. His name is Richardson. He read the paper to me.
Q. When did you last see Susan?
A. I saw Susan last fall. She was going down to see her mother.
Q. Are you and Susan good friends?
A. Yes, sir; good friends.
Q. You never had any quarrel?
A. No, indeed. We never had any words. I never had any difference with her.
Q. Are you married?
A. Yes, sir.
Q. What is your husband's name?
A. His name was Tom Seavers.
Q. When did he die?
A. He is not dead yet. When the colored people were going away he went away too. He was with a man who did better for him than he does now for himself.
Q. But he did not go back?
A. No, sir; he staid in the city. He was so lazy and good for nothing I made up my mind I would not follow him. I had children to work for, and I thought I would rather stay there and work for my children than to come here and suffer with him.
Q. Now tell us, please, where you saw Susan Jackson.
A. She came down to Surrattsville on her way to see her mother—she and her husband. I was down there fixing Mr. Robey's daughter off to get married—fixing up some clothes. When they got to T. B. her horse gave out, and they wanted to stop there all night. Mrs. Robey was away. I told her that if Mr. Robey said so she could stay, but that otherwise she could not sleep in that house that night. When Mr. Robey came out he told them they could rest their horses and go on; that she could not stay there that night.
Q. What was the reason she could not stay there?
A. Mrs. Robey was away from the house, and left the house in my care, and I could not take any stranger in to lodge in the house.
Q. She was a stranger to you, then?
A. I had seen her. She was no intimate friend.
Q. You did not like last fall to take a stranger into the house?
A. I would not take her into Mrs. Robey's house when she was away. If it had been my mother I would not have done it.
Q. Was this a tavern?
A. Yes, sir; Mr. Ned Robey kept it.
Q. They did not take strangers in there did they?
A. Yes, sir, they took strangers in.

By Mr. MERRICK:

Q. You mean strangers to Mrs. Robey?
A. Yes; Mrs. Robey was not there.

By Mr. BRADLEY:

Q. They took in strangers who wanted to lodge there and paid for their lodging, did they not?
A. Yes, sir; they did. They did not take in anybody except white people They had no arrangements for taking in colored people.

By Mr. PIERREPONT:

Q. Did they take in any people they did not know?

A. Certainly they took in more than they knew. It was a tavern; and if they had not done this it could not have been of any service to them.

The court took a recess until to-morrow, at 10 o'clock a. m.

FRIDAY, *July* 12, 1867.

The court met at 10 o'clock a. m.

Examination-in-chief of JOHN A. W. CLARVOE resumed.

By Mr. BRADLEY:

Q. When you were interrupted yesterday, you had proceeded so far as to state that you went, with a number of others, to the house of Mrs. Surratt to capture Booth and arrest John H. Surratt. Now state, if you please, taking up your narrative, all that you recollect that passed after you reached Mrs. Surratt's house.

A. I went to the house with McDevitt, Lieutenant Skippon, and others. McDevitt, myself, and Lieutenant Skippon entered the house after putting a guard at the back and at each corner. We went up and knocked at the door. The door was opened by a man barefoot, in his shirt-sleeves, and bareheaded. I asked him if John Surratt was in.

Q. Who was that man?

A. He gave me his name as Weichmann. Said he, "No, sir, he is not in the city." Said I, "His mother is in. Does she live here?" He said "Yes." I told him I would like to see the lady. He said she was in bed. I told him it made no difference, I must see her. Said he, "I will speak to her first." As he moved from the door I pushed in, and the rest followed.

Q. Did you follow him?

A. I followed Weichman; yes, sir. He went to the second door in the passage, to the left, which I supposed to be the back parlor. He went to that door and knocked, I think. When he first went, he held a conversation there a few minutes. I went to the door and saw a lady standing there. I asked if that was Mrs. Surratt. She said it was. I told her I wanted to see John. She said, "John is not in the city, sir." I asked her when she had seen him last.

Mr. PIERREPONT said the witness could not say what Mrs. Surratt stated.

The COURT said the witness might give in evidence all the conversation the witness Weichman alluded to in his evidence.

Mr. BRADLEY said that was all he asked of the witness.

Mr. PIERREPONT denied that Weichman had alluded to any such conversation in his evidence, whatever, and appealed to the reporters' notes to sustain him.

The notes of the witness Weichman's testimony having been read, Mr. Pierrepont still denied that the conversation this witness had commenced to relate was referred to by Weichman. The conversation stated by Weichman was no one else but himself was present with Mrs. Surratt.

The COURT remarked that the notes seemed to show that there were two conversations; one between the detective outside with Weichman, and another inside between Weichman and Mrs. Surratt. Anything relating to these conversations that the witness heard could be stated in evidence.

Mr. BRADLEY said he proposed to prove that, in point of fact, the incident did not occur as Weichman stated it.

The COURT said the counsel might prove by this witness whether the conversation Weichman testified to was in his presence.

Q. Was Mr. Weichman standing by the door when this conversation passed between you and Mrs. Surratt?

A. Mr. Weichman was to my left. I was on the right of him, and behind him was McDevitt.

Q. Could you hear every word that passed?

A. I should think so; I could.

Q. Was it directly in continuation of the conversation he had had with Mrs. Surratt—the former part of the conversation?

A. He had had a conversation with Mrs. Surratt before I got to the door.

Q. Was that completed before you came up, or was it still going on?

A. I do not recollect whether it was going on or not when I got to the door.

Q. You do not remember whether it had ceased before you got there?

A. No, sir.

Mr. BRADLEY then offered to give in evidence what passed between the witness Clarvoe and Mrs. Surratt, in Weichman's presence at that time. He understood the court to overrule it; and he (Mr. Bradley) reserved an exception to the ruling of the court.

Q. Now proceed with your narrative. You cannot say anything of what Mrs. Surratt said.

A. I asked Weichman then if he belonged in the house. He told me he did. Said I, "I want to see in your room." I left McDevitt at the door in conversation with Mrs. Surratt, and went up stairs with him. Lieutenant Skippon, also, was with me, and another officer behind us.

Q. What did you do?

A. He carried me into his room, from the room that Mrs. Surratt occupied, the back parlor. I asked him if he said that was his room. He said it was. Said I, "Is that your trunk?" He replied "Yes, sir." It was a large trunk. He put his hand on my shoulder and said, "Will you be kind enough to tell me the meaning of all this?" Said I, "That is a pretty question for you to ask me. Where have you been to-night?" He replied, "I have been here in the house." Said I, "Have you been here all the evening?" He said no, he had been down the country with Mrs. Surratt. I said, "Do you pretend to tell me you have not heard the President has been murdered?" He replied, "Great God! I see it all!" or "I see it all, now!" He then asked me if that was true. I told him it certainly was, and pulled out a bow of a neck-handkerchief which I got out of the box, saturated with blood. I told him that was the President's blood; that John Wilkes Booth had done it, that it was supposed Surratt had assassinated the Secretary of State. I remained in his room a few minutes and started down stairs, Weichman in company. When I got below I met McDevitt and called him aside. I told him——

Mr. PIERREPONT. You need not give your conversation with McDevitt.

Q. Before you went down stairs did you or not go in a room where some young ladies were?

A. Not at that time.

Q. What did you do when you went down stairs?

A. I went and had a conversation with Mrs. Surratt.

Q. Was Weichman with you?

A. I do not know.

Q. Go on to state what passed.

The COURT said witness might state the conversation that occurred with Mrs Surratt when Weichman and McDevitt were present after the return down stairs.

WITNESS. I do not exactly understand what you want me to state..

Mr. MERRICK read from the testimony of the witness Weichman as to the conversation that occurred after he went down stairs.

Mr. BRADLEY. Did you go down with Weichman?

A. Weichman came down behind me.

Q. Was Mrs. Surratt coming out of her room?

A. Mrs. Surratt was standing in her room. She had changed her dress before we had come down.

Q. Had Weichman come down stairs before that—before he came with you?

A. No, sir; he could not have done it.

Q. Did you hear Weichman say, "Mrs. Surratt, what do you think? Abraham Lincoln has been murdered?" or "President Lincoln has been murdered?"

A. I did not hear it.

Q. Did you hear her reply to an observation, "My God! Mr. Weichman, you do not tell me so!"

A. No such reply to me.

Q. You may state the conversation that occurred at that time.

(Objected to by Mr. Pierrepont.)

The COURT said the witness might state what occurred between Mrs. Surratt, Weichman, and himself, when all three were together.

Mr. BRADLEY said he had not asked the witness for anything else than what occurred when they were all together.

WITNESS. I am satisfied that Mr. Weichman was with me when I came down stairs.

Mr. MERRICK argued that it was not necessary for the witness to state absolutely that Weichman was present. He stated that to the best of his belief they had a right to show by proof *aliunde* that he was present.

Mr. PIERREPONT replied they might prove by this witness or by any other person that Weichman was present but until that proof the conversation alluded to could not be stated.

The COURT decided that the conversation might be given by the witness and that if it was proved subsequently that Weichman was present, it would be received in evidence, otherwise not.

The examination was then continued.

Q. I understand that you came down stairs followed by Weichman?

A. I did not say that. I came down stairs followed by McDevitt, and Weichman followed him.

Q. I understand that you came down stairs, and that a conversation passed with Mrs. Surratt immediately on your coming down.

A. I spoke to McDevitt when I came down stairs as I recollect now, Weichman being on the steps when I spoke to McDevitt.

Q. How far off?

A. The stairs run up by the side of the door.

Q. How many feet off?

A. I do not recollect how many feet.

Q. You did not miss Weichman from you? You did not see him go away?

A. I did not.

Mr. BRADLEY. I now ask you to state the conversation?

(Question objected to by Mr. Pierrepont. Objection overruled by the court, with the understanding that unless it was subsequently proved that Weichmann was present, the testimony would be ruled out.)

WITNESS. I went to her, and said I, Mrs. Surratt, I want to ask you a couple of questions; and be very particular how you answer them, for there is a great deal depends upon them. When did you see John Wilkes Booth? She replied she saw him at two o'clock that day. Said I, when did you see your son, John, last, and where is he? Said she: I have told you, sir, I have not seen John for over two weeks. I asked her, then, if she could tell me where he was. She said the last she heard of him was in Canada.

Q. Did she say she had heard from him that day?

A. Yes, sir; I understood her to say she heard from him that day; that she had received a letter from him that day, or had heard from him, I do not recollect which—one or the other. She asked me what was the meaning of all this and she said there were a great many mothers who did not know where their sons were. Said I, Mc., you tell her; and then I started up the steps.

Q. When you started up the stairs, where did you go?

A. I went up to a little room over the passage. I tried the door, it was

locked. I heard a female voice inside. At that time John Holahan came out of the door opposite. As he came out I said: John, how do you do? What are you doing here? Says he: How are you, John? I am boarding here? What is the matter? Said I: How long have you been here? He said he took a walk the night before and got in early, about nine o'clock, I think. I told him the President had been murdered. He replied: Great God Almighty! and seemed to be surprised. I then took hold of the door to open it, and he said that was his little daughter in there, and asked me to come this way. I went up the steps and when we got on the platform, I told him I wanted to go into that room. He said his wife was in there; that he would speak to her and let me in. He asked if it was true what I told him. I told him it was. We then started on to the upper story, he told me the front room facing on H street was occupied by two young ladies, and would I have any objection for him to tell them that we wanted to come in their room. I told him that I had not. He went to the door, knocked and the door was opened. I then slipped into a little passage, or little room over the passage, opened the door and went in. That door was not locked.

Q. That was the little room over the passage at the top of the house, was it not? The servants' room?

A. Yes. When I came out Mr. Holahan said that was the servants' room.

Q. Did you look in that room?

A. I searched the room.

Q. If there had been any body lying on the bed would you have seen them?

A. I certainly should have seen them.

Q. Can you state positively whether there was a woman rolled up in the clothes in that bed-room or not?

A. No, sir; there was not.

Q. What followed next?

A. I stood there a moment, came down, went to the door. He told me that the ladies were ready. I went into the room and searched that room. The ladies were covered up. I told them they would have to show me their faces, that they must excuse me. I pulled the cover from their faces and saw that they were two young ladies.

Q. You are certain they were not colored women?

A. They were not colored women. I have seen one of the ladies in this court room.

Q. Was there any colored woman in the bed in Weichmann's room?

A. No, sir.

Q. Now go down stairs if you please.

A. I went down stairs and told McDevitt I thought it was best ——

Mr. PIERREPONT. No matter what you told McDevitt.

Q. Did you see Susan Ann Jackson? If so, tell us what she said.

A. I then went down into the basement, and going down the stairs I met Lieutenant Skippon. He followed down behind me. At the back room—the kitchen—I saw a black woman. Says I, "Aunty, is John Surratt in this house?" Says she, "I do not know him, sir; whom do you mean, Mrs. Surratt's son?" I said I did; that I did not know Mrs. Surratt had a husband. "I have not seen him," said she, "for over two weeks."

Q. Did she tell you she had been covered up in bed up stairs?

A. No, sir; she did not mention that.

Q. After that, what did you do?

A. I went up stairs; had a conversation with the men. We searched the house, closets, and cupboards, and different places, and then I left there.

Q. When did you see Louis J. Weichmann again?

A. I saw Louis J. Weichmann the next morning, about 9 o'clock.

Q. Where?

A. In the front of our office, on Tenth street at that time.

Q. Was anybody with him?

A. Yes, sir; Mr. Holahan and Mr. McDevitt were in conversation with Weichmann when I came up.

Q. Go back now to your first entrance into that house. When Weichman opened the door, did you, or anybody else in your hearing, tell him when he inquired who was there, "Government officers, come to search the house for John Wilkes Booth and John Surratt?"

A. Some one of them, I think McDevitt, replied that it was officers; that we wished to come in.

Q. Did you tell him you were there to search the house for John Wilkes Booth, and John Surratt, or did anybody say that in an audible tone of voice?

A. I did not, and did not hear it.

Q. Now, following him up to the time you were on the pavement in front of the police office or headquarters, I wish you to state what followed after that, in his presence.

A. I had very little conversation with Weichmann. We were getting up a party.

Q. I do not want to know what you said, I want to know what was done with him.

A. He was with McDevitt.

Q. After you went into the house, what was done with him? State whether he was or not put in charge of somebody.

A. I do not know; I left that morning.

Q. State where you went to and what you did in reference to this matter.

A. I went to the First ward and got some horses, and went to Surrattsville.

Q. Did you see John M. Lloyd at Surrattsville?

A. I did.

Q. Did you inquire of John M. Lloyd where Booth or anybody else was?

A. I did.

Q. State what passed between you and Mr. Lloyd.

(Question objected to as irrelevant.)

Mr. BRADLEY said he proposed to contradict the witness Lloyd in the conversation inquired about, and that he had laid the foundation plainly in Lloyd's testimony.

Mr. PIERREPONT said Lloyd was asked if he did not tell the officers that these parties had not passed there, and that he replied he did, and gave his reasons.

Mr. BRADLEY replied that he had asked Lloyd if that was all that passed, and the reply was, yes. Mr. B. then read from the cross-examination of the witness Lloyd to show that he had laid the foundation for contradicting him, in the conversation inquired of.

The COURT said the witness might be asked whether Lloyd told him that he knew nothing about the circumstances.

Q. Did he tell you that he knew nothing about the circumstances at all?

A. I do not know what circumstances you mean. I never mentioned Herold's name to him.

Q. Did you tell him there was money enough in this thing to make both of you rich, if he would give you the information he possessed?

A. No, sir; there was nothing said about money or getting rich.

Q. Did he tell you he knew nothing about the circumstances at all?

A. Not in that way, he did not.

Q. I now ask you what he did tell you?

WITNESS. Do you want to know what I said to him?

Mr. BRADLEY. Yes, and what he said to you.

A. Well, sir, I went up to the house alone. He was standing in his door

with several on his porch. Said I "John, how do you do?" I recognized him as a man I formerly knew as an officer, under Mr. Barrett, I think it was. Said I "John, I would rather see you now than anybody I know except two men." Said he "come in." We went into the sitting room. I asked him if he had heard anything. Said he "I heard the President had been shot in the city." Said I, "whom did you hear that from?" He said he heard it that morning from soldiers. I asked him if he heard it from them this morning. He said yes. I asked him who they told him did it. He said "a fellow by the name of Booze, or something like that, a circus actor." I told him to get back, that he could not play that sort of game; that Mrs. Surratt was here the day before; and asked him whom she was in company with. He said in company with a young man by the name of Weichmann. At that time Bigley came up. I went out to meet Bigley and then went back to the room again. Said I, "John, give me the trail." He said he did not know what I was talking about. I asked him if he did not know Booth. He said he did not. At that time Mr. Bigley came in. We took a drink. I then said to Lloyd that he and I knew these men would be taken; that if he would give me the trail, he was a made man and so was I. He raised his hands and said these men could not have been past there; that he had been up all night.

Q. Was he drunk or sober?

A. He was sober.

Q. After leaving Surrattsville, where did you go?

A. I asked Lloyd, if he was in pursuit of these men, which road he would take. He gave me the Piscataway road.

Q. Was that the road towards T. B. or Leonardtown?

A. No, sir. It was my intention to take the Beantown road; but he put me on the Piscataway road which brought us back towards Washington. I was with Weichmann, Holahan, McDevitt, Keys, and several others.

Q. Did you return to Washington or go further on?

A. We went further on. We did not return to Washington. Bigley and myself did not, I judge, until Monday morning about two o'clock, when our horses having failed, we came back. Or it was Sunday night you might say.

Q. On Monday what did you do?

A. On Monday we were preparing to go. We were preparing to leave the city and go to Canada.

Q. Did you go to Canada, or how far did you go?

A. I went as far as Philadelphia and returned. Then on Saturday I started to catch up with the party.

Q. Did you afterwards go to Canada?

A. Yes, sir.

Q. For what purpose and by whose orders?

A. I went by my own order, I judge, at the time I started. I went twice to Canada. I left the party, Bigley, McDevitt, Holahan, and Weichmann, in Philadelphia, after we had first started, and returned with a prisoner.

Q. Did you go again while they were in Canada?

A. Yes, sir.

Q. Now state for what purpose you went; whether under promise of reward, or anything.

A. On my first trip to Canada, I went to catch the party ahead of me. When I arrived in Canada I could get no tidings of them.

Q. No tidings of whom?

A. I was looking for Holahan, McDevitt, Bigley, and Weichmann. I returned to Washington for want of money, and then started again.

Q. What was the purpose of your going the second time? State whether you had any offer, any promise of reward, and if so, for doing what?

A. I will explain what caused my trip last time. Last time I started for

Canada was on a despatch received from New York. It was from McDevitt, and read "Send Clarvoe immediately here."

[The district attorney interrupted the witness by calling attention to the fact that other witnesses were present in the room, in violation of an order, as he understood, on that subject. The court replied that no order had been made on that subject; that witnesses on both sides had been in the room all the time.]

A. I had the promise of a reward on my last visit to Canada; and I will state to you the circumstances in connection with that reward. I asked Major Richards to go with me.

[This evidence objected to by Mr. Pierrepont as not proper, so far as he could see. Mr. Bradley said the object was to show the circumstances under which witness went to Canada on this occasion. The court remarked that he did not see what the reward had to do with it, but allowed the question to be asked.]

A. I started to go to assist the men who were there.

By Mr. MERRICK:

Q. What else had you to do?

A. I wanted to get Weichmann and Holahan into the States.

Q. If you were offered a reward for that, state it.

[Question objected to by Mr. Pierrepont. Mr. Merrick proposed to prove that the witness was offered a large reward to bring Weichmann home; Weichmann had testified that he was under no restraint. The court said he did not see the relevancy the reward had to the issue.]

By Mr. BRADLEY:

Q. Do you know anything of Mr. Holahan's getting clothes from Mrs. Surratt's about the time you were starting away?

A. Yes, sir; it was on the seventeenth; on Monday. I was in a hack with Mr. Holahan, and started to go to see a lawyer to get the directions of the party. He asked me to drive past that house. We went to Mrs. Surratt's house; went up stairs. He went into his room and picked up some things that were on the bed, and amongst them were two handkerchiefs.

Q. Did you see these handkerchiefs, or either of them?

A. One of them.

Q. State whether or not it had a mark on it?

A. He showed it to me and said, "Here are some of John Surratt's handkerchiefs." He showed me one with the name on it. I told him to keep them; that we would want them.

Q. What name?

A. "John H. Surratt" was on the handkerchief.

Q. Do you know whether it had a number or mark on it besides the name?

A. I did not examine it closely. I just merely took a glance at it. That was the first I knew that his name was John H. Surratt.

Q. Do you recollect how the name was put on, whether it was across the corner or not?

A. I do not recollect.

[Handkerchief heretofore placed in evidence shown witness.]

I do not recollect about the name. The handkerchief was folded up [manner of folding exhibited] and I saw the name on the corner.

Q. Then all you recollect about it is that he picked up a handkerchief with the name of John H. Surratt on it, and that you saw the name on the handkerchief. Whether it had a number on, or any other mark, you do not remember?

A. I do not remember.

Cross-examined by Mr. PIERREPONT:

Q. What is your business?

A. Detective.

Q. You have been in the business for some years?
A. Since 1863 I have.
Q. It was Mr. Weichmann who came to the door with his shoes off, that night, and opened it?
A. Yes, sir.
Q. It was not Mr. Holahan?
A. No, sir.
Q. You are sure of that?
A. I am satisfied of it.
Q. Mr. Holahan told you that he went to bed that night about nine o'clock?
A. Yes, sir; or a little after.
Q. Now take this paper and pencil and draw the rooms on that floor on which these young ladies were, showing their bedroom and likewise showing Mrs. Holahan's bedroom. [Witness made a diagram of the upper story of Mrs. Surratt's house.]
Q. Now tell me which Mrs. Holahan's room was?
A. Mrs. Holahan's room would be under the room marked "front." She was not on that story.
Q. Was Mrs. Holahan in the room you were told was the servant's room in that story?
A. No, sir.
Q. She was not in the same story?
A. No, sir; she was in the story below.
Q. Then you did not go out of Mrs. Holahan's room to look into the servant s room in the same story?
A. No, sir.
Q. In this servant's room you went into, was there a bed?
A. Yes, sir.
Q. Tell the jury what time of night it was?
A. I judge between two and three o'clock.
Q. At what time did you get to the house?
A. About half-past two or a little earlier.
Q. How long after you got to the house before you went up to this servant's room where there was a bed?
A. I suppose half an hour.
Q. Will you tell the jury whether you put your hand upon the bed?
A. I did not.
Q. Do you know whether the bed was warm or not?
A. No, sir.
Q. Then you do not know whether there was a person covered up in it or not?
A. I know there was no person in it.
Q. How do you know?
A. The covering was thrown back and I could see.
Q. But you did not put your hand upon it. Can you tell whether it had just been left or not?
A. I can only say that it looked as if it had been tumbled.
Q. If the person who had been there got up, they rose at a pretty early hour in the morning did they not?
A. I do not know at what time they got up. They were not there when I got there.
Q. They were not there at three o'clock in the night?
A. No, sir.
Q. Tell when you left that place?
A. We went back to the office shortly after three.

Q. When you went below you say you saw a colored woman. Where did you see her?

A. Down in the first story.

Q. The basement you mean?

A. I do not know whether it was a basement. I think not.

Q. Was it in the parlor story?

A. No, sir; it was under the parlor story.

Q. Where was she?

A. She was at the door of the back room.

Q. Was the door open?

A. No, sir.

Q. Was there any light there?

A. We had a candle there lighted, a spermaceti candle, which I had taken out of my own pocket.

Q. Was that the only light you had?

A. No, sir; the house was lighted up.

Q. Was that part of the house lighted?

A. Yes, sir.

Q. What was it lighted with?

A. I do not recollect.

Q. Was the colored person you saw there dressed?

A. She had on a kind of calico dress. some dark kind of slate-colored dress, open in the bosom, flowered.

Q. You think you are not mistaken about that?

A. I think I am not.

Q. You say you called her "aunty." How old a person was she apparently?

A. I do not know, she may have been twenty-five or thirty.

Q. Do you know her age?

A. I do not.

Q. Do you know her name?

A. I do not.

Q. Have you seen her since?

A. I do not know whether I have or not.

Q. You say you went to Canada. What did you go to Canada for?

A. I went to Canada to look for John Surratt.

Q. Who sent you?

A. The government, or partly the government.

Q. Government officer?

A. Yes, sir.

Q. You have stated that in your talk with Mrs. Surratt that night she told you her son was in Canada. Is that so?

A. Yes, sir; I heard her say he was in Canada.

Q. She said so that night of the murder?

A. Yes, sir.

Q. What did she say about mother's son's?

A. I am not sure whether I heard. She said to me, "What is the meaning of all this?" I then said to her I would like her to answer my question. Then she said, "A good many mothers do not know where their sons are."

Q. When you told her you would like her to answer your question, had she been evasive in her answer previously?

A. No, sir.

Q. Then why did you tell her you wanted her to answer your question?

A. She said, "What is the meaning of all this?"

Q. At what time did you arrive at Mr. Lloyd's house when you went out there?

A. Before twelve o'clock on Saturday, the 15th.

Q. State to the jury whether he was drunk?
A. Not to my kowledge. He was not drunk.
Q. He was perfectly sober, was he?
A. Apparently.
Q. Did he tell you he knew nothing about it?
A. He did not.
Q. Did he try to mislead you?
A. I know he did mislead me.
Q. He took great pains to try to mislead you, and put you on the wrong road, did he?
A. I do not know whether he took great pains to put me on the wrong road. He told me what road if he was me he would take.
Q. That was the wrong road?
A. Yes, sir.
Q. Do not you think from his conversation that he was trying to mislead you?
(Question objected to by Mr. Merriek on the ground that only the inference of the witness was called for. Objection sustained.)
Q. Did he say anything as though he he did not know anything about——
(Question objected to by Mr. Merrick. Objection sustained.)
Q. Did he use words that conveyed to you the idea that he knew nothing about it?
(Question objected to by Mr. Bradley.
The COURT said the witness could be asked to state what he said substantially.)
Q. Substantially what did Lloyd say?
A. Mr. Lloyd told me they had not been past there, and could not have passed there without his knowing.
Q. Did he tell you they could not have passed?
A. Yes; and that he had been up all night.
Q. What further did he tell you?
A. He told me he had heard it that morniug from some soldiers; that they told him it was some man by the name of Booze, or something like that, a circus actor.
Q. What did you tell him if he would tell you about the making of you? Give the exact words as nearly as you can remember.
A. I told him that his experience as an officer would tell him that these men were bound to be caught; to give me the trail and he was a made man, and so was I.
Q. Did you get him to give you the trail even on that offer?
A. I did not.
Q. He carefully concealed it, did he?
(Question objected to by Mr. Bradley and withdrawn.)
Q. Which way did the Piscataway road lead?
A. It led to the right.
Q. And if you followed it where did it take you to?
A. It brought me into Piscataway.
Q. If you had gone further where would it have carried you?
A. I judge I could have gone to Washington.
Q. Then it led towards Washington, did it?
A. I do not know whether it did or not. I believe it was the river road to Washington.
Q. You did not get any information from Mr. Lloyd that put you on the trail of the murderers, did you?
A. No, sir.

Q. Did you get any information or statement from Mr. Lloyd that put you off the trail of the murderers?

A. Yes, sir.

Q. You say you went with Mr. Holahan back to Mrs. Surratt's to get some clothes on the 17th. What time in the day did you go?

A. About two o'clock, I judge, in the afternoon. One or two o'clock.

Q. Now when you got to the house where did you go to?

A. We went up stairs.

Q. To what story?

A. To the second story—the story over the parlor.

Q. What did you find there?

A. I did not find anything. He picked up some clothing.

Q. Where did he get it from?

A. From the bed.

Q. Any other clothes than the two handkerchiefs? What other clothes?

A. I do not know.

Q. Did they lay spread out on the bed?

A. Yes, sir.

Q. They were clean?

A. Apparently.

Q. Ironed and folded?

A. Yes, sir.

Q. This was Monday, I understand you. Had both handkerchiefs Surratt's name on them?

A. I do not know. He showed me one.

Q. What did he tell you?

A. When he showed me the handkerchief I told him to keep them, that we should want them. My intention was to get them from him.

Q. You thought they would furnish some clue to John Surratt?

A. I thought so.

Q. He put them in his pocket did he?

A. Yes, sir.

Q. I suppose you would not know that handkerchief if you were to see it?

A. No, sir.

Q. You know Mr. Holahan pretty well, do you not?

A. I had known Mr. Holahan when he was in the substitute business.

Q. What substitute business?

(Question objected to by Mr. Bradley. Objection sustained.)

Q. You went to Canada and saw Mr. Holahan there?

A. I did.

Q. Did you talk with him?

A. Yes, sir.

Q. Did you talk with him about the handkerchiefs?

A. I did.

Q. Did Mr. Holahan tell you anything about losing the handkerchief?

A. Yes, sir.

Q. Where did he tell you he lost it?

A. He told me he had lost the handkerchief in the depot.

Q. Where?

A. I do not recollect the depot.

Q. Did he tell you he lost it at St. Albans?

A. I do not recollect the depot.

Mr. BRADLEY said he objected to the question; it had been answered. Witness had already stated he did not recollect what depot it was.

Mr. PIERREPONT said he had no further questions to ask.

By Mr. BRADLEY:

Q. You say that you do not know that you have seen that colored woman since that night. Were you here when Susan Jackson was examined or recalled for cross-examination?

A. Yes, sir.

Q. State whether, to the best of your recollection, she was the woman.

A. I thought she was the woman. I saw her coming across the court-house square, and I thought she was the woman, but I do not know it.

Q. To the best of your recollection and belief she was the woman?

A. That was a woman of her stature—a square-shouldered woman. There were two or three officers in company with me that made me speak of her.

JAMES A. MCDEVITT, detective officer Metropolitan Police, sworn and examined.

By Mr. BRADLEY:

Q. Will you state whether on the night of the 14th of April, 1865, or the morning of the 15th, you took any steps to discover and arrest the assassins of the President?

A. I did. I received information that J. Wilkes Booth had fired the shot.

Q. Did you go to the house of Mrs. Surratt?

A. I did.

Q. Who went with you?

A. Lieutenant Charles M. Skippon, sixth precinct, then sergeant of the precinct, and a squad of his men, Mr. Clarvoe and myself, and Mr. Donaldson, one of our detective officers.

Q. State at what time you arrived there, and give as well as you recollect a narrative of the incidents that occurred.

A. I think after the bell was rung, a lady put her head out of the second story window—that is the window over the parlor—and asked us who it was. We asked for Mrs. Surratt, if she lived there; she said, she did; we said, we wish to come in immediately; the door was then opened by Mr. Weichmann; he was dressed in his shirt sleeves, and I think he was in his stocking feet; his shirt was open in the bosom; I think he had one suspender on, but I am not certain; we asked for John Surratt; he said, he was not at home; we found a shawl lying there in the passage, and asked whose shawl that was. It was covered with mud.

Mr. BRADLEY said he supposed he could not inquire about that shawl.

Mr. PIERREPONT did not object

Mr. BRADLEY. Then go on and state about the shawl.

WITNESS. I asked Weichmann whose shawl it was; he said it was a shawl he had used in going to Surrattsville with Mrs. Surratt that day. I went to the door occupied by Mrs. Surratt; I think there were some ladies in the room with her—one, at any rate; the question was asked her where her son was. She said she had not seen him since the fall of Richmond.

Q. Who was present when this conversation took place?

A. Mr. Weichmann and Mr. Clarvoe. She turned to Mr. Weichmann and says, "How long has that been, Mr. Weichmann?" He replied, "About two weeks." I then went to Mr. Holohan's room, and saw himself and his wife; they told me their daughter occupied a small room just as you go up stairs—a front room.

Q. Who was with you?

A. I think I was accompanied by Mr. Clarvoe; I am not positive; I have not given this matter a great deal of attention, never having thought of being called here, and I may not be able to give as accurate an account of it as I could have done at the time; I asked Mrs. Surratt, I think, when she had heard from her son.

By Mr. PIERREPONT:

Q. Was that after you came down?

A. I think before; but I will not be positive whether before or after.

By Mr. BRADLEY:

Q. Were Mr. Weichmann and Mr. Clarvoe present during that conversation?

A. I will not swear positively; I think they were present when I asked where the letter was that she had received.

Mr. PIERREPONT. You need not tell about that letter.

Mr. BRADLEY. Was that a part of the conversation?

WITNESS I think they were present when I asked about the letter she had received. She said it was somewhere about the house, and asked some one to find it for her.

Mr. PIERREPONT objected to anything in relation to a letter not produced being given by the witness.

The COURT replied that if it was a part of the conversation in the presence of Weichmann, witness might testify to what was stated.

Mr. PIERREPONT remarked that the witness had not said Weichmann was there.

WITNESS. I said I thought he was present.

The COURT to witness. If there was any more conversation, you may state what was said in the presence of Weichmann.

WITNESS. I will not state anything that I do not think to be correct. I asked where that letter was she received that day; she said it was somewhere about the house, and asked some one to get it; they did not find the letter, or, at least, I did not see it.

Q. When you stated that, did you go down to the basement?

A. This was in the basement, in the front basement room—the dining room I suppose. After searching for the letter we started for the kitchen door, and there saw two colored females.

Q. Describe them if you can.

A. That is quite impossible for me to do.

Q. State whether one was a girl and one a woman.

A. I do not know; one was darker than the other.

By the COURT:

Q. Were they both grown?

A. I will not be positive about that. The question was asked, "Where is John Surratt, is he secreted about the house?" One of these women says, "I do not know." I think Mr. Clarvoe said, "You don't know;" she says, "Do you mean Mrs. Surratt's son?" He replied, "I did not know that Mrs. Surratt was married; I did not know that there was but one John Surratt." She says, "If you are speaking of Mrs. Surratt's son, I have not seen him for some time, about two weeks." I then went to the door, to the best of my recollection, and proceeded with others to search the stable.

Q. According to the best of your recollection and belief, have you seen that woman since then?

A. I will not swear positively whether I saw her or not.

Q. I ask you for the best of your recollection and belief.

A. The other day I was standing outside here, having been subpœnaed for the defence, and said I was going away; that I did not know what they wanted. They said they just wanted me to see a party. While I was standing there in company with Mr. Clarvoe and Mr. Boss, this woman came up stairs. Mr. Clarvoe remarked, "There goes a woman who looks like the woman at Mrs. Surratt's house that night." I could not swear whether she was the one or not.

Q. What do you think?

A. I will not swear whether she is the woman or not.

Q. What is your opinion about it?

A. All I can say is, there were two of these women, and that, according to my recollection, one was a dark woman, and the other light complected. You must remember that, in my position as a detective in seeing so many, it would be impossible to remember a person with a certainty that long.

Q. After that, what occurred?

A. After we had searched the house, I ordered Weichmann and Holohan to report at our office at 9 o'clock in the morning. They reported before that time.

Q. Did you or not put either of these officers in charge of Mr. Weichmann?

A. I took charge of Mr. Weichmann and told him to consider himself in my charge; that if any one came after him to arrest him, to tell them that I had him arrested and that he was in my charge. Weichmann went with me to my house to breakfast on Sunday morning.

Q State whether he was kept under arrest, or whether he was allowed to go at large until he reached Canada?

A. Up to the time he reached Canada I think Mr. Weichmann was in my custody except when he was at police headquarters. This is to the best of my knowledge. I went into the country with Weichmann and returned with him Saturday evening. He asked me, when we got to police headquarters, what was going to be done with him. I told him he was to remain there. He said, "Are you going to hold me?" I replied, "Certainly we will have to hold you." I left him there at the police headquarters and went with Mr. Holohan out on some business.

Cross-examined by Mr. PIERREPONT:

Q. Do you know anything about this order which has been referred to in evidence several times? (Order in evidence for McDevitt, Weichmann, Holohan, &c., as special officers to proceed to New York city, &c., shown witness,)

WITNESS. That is not correct.

Q. Have you the original with you?

A. I have.

Q. Read it.

(The order read by witness is the same as that already in evidence except as to the Christian name of Mr. Holohan.)

Q. Did you and Mr. Weichmann go as special officers under that order?

A. We went under that order.

Q. Where did you go?

A. To the city of New York and from there to Canada.

Q. Were you with Mr. Weichmann in Canada?

A. I was.

Q. You were not with him all the time?

A. I was not.

Q. Did he come back with you?

A. He came with Mr. Bigley, one of our detective officers.

Q. How long was he with you in Canada?

A. I do not know. I saw no more of him until he returned to New York after I left Canada.

Q. Did he come back afterwards?

A. He came back afterwards to New York, and came on to Washington with me.

Q. And remained here?

A. Yes, sir.

Q. Was the object of your visit to Canada to search for Surratt?

A. That was one object.

Q. You did all you could in that search?

A. Of course.
Q. You did not succeed?
A. We did not.
Q. You told us about a letter Mrs. Surratt alluded to; you did not find that letter?
A. No, sir.
Q. You never saw that letter?
A. No, sir.
Q. You could not find it in the house?
A. No, sir.
Q. You searched for it?
A. We made no extraordinary search.
Q. But you searched for it and could not find it; then you went into the basement and saw two colored women—where?
A. In the passage-way.
Q. It was rather dark, was it not?
A. We had a light.
Q. What light?
A. I think Mr. Clarvoe or somebody had a candle.

By Mr. BRADLEY:

Q. Did you say it was rather dark in that passage?
A. No, sir; I did not.

By Mr. PIERREPONT:

Q. Was it dark or light?
A. It was light enough to tell a negro from a white person.
Q. You could tell a negro from a white person in that light?
A. Indeed I could.
Q. You did not require a very strong light for that?
A. We certainly had sufficient light for that.
Q. Did you have sufficient light to tell how these colored women were dressed?
A. No, sir. I did not take particular notice of that.
Q. Could you tell how either one was dressed?
A. I could not.
Q. Was one dressed in a slate colored calico dress?
A. It would be difficult for me to say whether either had a calico dress on or not. Calicoes sometimes look like silk on the street; they do not bear examination.
Q. Were they both about the same height?
A. I cannot swear to that.
Q. What time in the night was it?
A. I judge we got to the house in the neighborhood of two. It may have been a little before or a little after.
Q. You did not see either of these women in bed, did you?
A. I did not go into that room at all.
Q. Could you tell which of the two was taller?
A. I could not. I only knew there were two colored females, and that one of the two made use of this language.
Q. You could not tell which was the taller, and which was the shorter?
A. No, sir.
Q. And you could not tell the age of either?
A. No, sir.
Q. You have been examined once before?
A. I have.

Q. Did you give any statement at that time in relation to seeing two colored women?

A. No, sir; because persons at that trial were only allowed to state certain matters.

Q. And you did not give any statement about it?

A. Not that I remember. I am not certain.

Q. Did you state in your former trial, as follows: "Mr. Weichmann accompanied me to Canada. I took him to identify John H. Surratt. He went with me willingly in pursuit of the assassins, and was zealous and earnest in performing the part allotted him in the pursuit, and although he had every opportunity to escape he did not. I left him in Canada when I returned to New York. I could not state from my own knowledge of John Surratt's writing—thatthe entry on the register of the St. Lawrence Hall is his?"

A. I stated that.

Q. All of it?

A. I did.

Q. And it is true?

Mr. BRADLEY asked whether it was proper for counsel to read the same facts witness had stated from the record of another trial, and ask whether he had said it.

Mr. PIERREPONT said witness had not testified to a part of the facts he had read.

The COURT remarked that it was a waste of time to read from the former testimony of the witness the same statement he had now made, but that counsel were wasting more in quarrelling about it.

Question repeated.

A. I think my statement in the former trial is all correct.

Q. When Susan Jackson was recalled the other day, did you not come in and stand beside the foreman of the jury?

A. I did.

Q. Did not you look at her then?

A. I did.

Q. And did you talk to her after she left the stand?

A. I did.

Q. Did not you ask her if she was the woman?

A. No, sir.

Q. Did not you ask her if she was not the woman?

A. No, sir.

Q. You said something to her?

A. I did; here is what I said to her.

Mr. BRADLEY. You need not state that.

Q. Did you ask her what I have said in substance?

Mr. MERRICK objected to the question as inadmissible.

The COURT said the witness might be asked whether he identified this woman on that occasion.

By Mr. MERRICK:

Q. You have already stated you would not swear she was the woman. What is your best recollection as to that?

A. I will not swear I believe her to be the woman or not the woman.

By Mr. BRADLEY:

Q. You have produced an original document under which you went to Canada. State the circumstances under which the order was made and the object of it.

Mr. PIERREPONT said the order would show for itself.

Mr. BRADLEY said it was nothing more than an order for transportation.

WITNESS remarked that the order in evidence was precisely like the original he had produced, except that the name of John Holohan, in the original, was written George Holohan in the copy in evidence.

Q. Did you not obtain the order?

A. I obtained this order; it was written under my instructions; that is, I dictated it.

Q. Did you ask them to appoint Holohan and Weichmann as special officers?

A. Yes, sir. I wanted they should go in as special officers. I thought we might have trouble if they were not mentioned in some form.

Q. You were asked about the light in that passage at Mrs. Surratt's. The counsel on the other side understood you to say it was a dim light, hardly enough to distinguish between the color of persons. Did you say there was a dim light in the passage?

A. I said there was light enough to distinguish between a white person and a negro.

Q. If you had examined their dress, was there not light enough for that?

A. If there had been as much again light I would not have paid any attention.

Q. Was there light enough to distinguish the color of their dress if you had examined it?

A. I should think so.

Lieutenant CHAS. A. SKIPPON recalled and examined.

By Mr. BRADLEY:

Q. State to the court and jury whether you were with these officers in their examination of Mrs. Surratt's house the night of the assassination.

A. I was.

Q. State whether you saw any colored women there.

A. I saw two colored women down in the basement.

Q. Describe them as well as you can?

A. To the best of my recollection one of them was a rather stout, thick set woman; the other was rather slim built, about the same height.

Q. About the same color?

A. No; she was a mulatto.

Q. Did you hear any conversation between Mr. Clarvoe and one of these colored women or not?

A. I heard one of the detectives—I cannot state positively which—ask one of the colored women when she last saw Mr. John Surratt. As I understood her, she said she had not seen him for several days.

Q. I asked you the other day, I believe, whether you had seen that woman since.

A. I would not know her were I to see her.

E. H. WYVILL, physician, Prince George county, Maryland, sworn and examined.

By Mr. BRADLEY:

Q. Is there any other gentleman of your name in Prince George county?

A. No, sir.

Q. Did you know Mrs. Surratt in her lifetime?

A. I did.

Q. Did you ever drive home to her house, in the month of March, 1865, a buggy and pair of horses, one white and the other gray?

A. No, sir; no horses of any color, and no horses at all.

Cross-examined by Mr. PIERREPONT:

Q. Were you in Washington in 1865, in the month of March?

A. I hardly know. I think it is very possible. I was here very frequently.

Q. Were you at Mrs. Surratt's house, in this city, in that month?

A. I never was at Mrs. Surratt's house in this city.
Q. Were you at the stable back of her house?
A. Yes, sir; I kept my horses there.
Q. Were you there in the month of March?
A. I could not say positively. As I stated just now, I was here very frequently.
Q. Did you know Mrs. Slater?
A. No.
Q. You knew Mrs. Surratt and you saw her in the month of March?
A. I do not think I did. I very seldom saw Mrs. Surratt after she left the country.
Q. Did you see her down in the country after that?
A. No, sir.
Q. Did you see her son in the country in the month of March?
(Question objected to by Mr. Bradley. Objection subsequently withdrawn.)
A. No, sir.
Q. Did you see him between the 20th and 28th of March?
A. No, sir.
Q. When did you last see him down there?
A. To the best of my recollection I saw John Surratt the last time either in December, 1864, or the early part of January, 1865.
Q. You never saw him there afterwards?
A. No, sir.
Q. Did you see Mrs. Surratt there?
A. No, sir.
Q. You have no memory of going to that stable in the latter part of March 1865?
A. I have not, but very likely I was there. I attend market and come in very frequently, perhaps every week.
Q. Do you know about any horses coming up about that time?
A. Nothing whatever.

HONORA FITZPATRICK recalled and examined.

By Mr. MERRICK:

Q. You stated in your former examination that you staid with Mrs. Surratt did you occupy her room with her?
A. Yes, sir.
Q. Did you sleep with her?
A. Yes, sir.
Q. What room was it she occupied?
A. It was the room back of the parlor.
Q. What kind of doors were there between that room and the parlor?
A. Folding doors.
Q. You recollect the night of the assassination, had you seen John Surratt about the house that day?
A. No, sir.
Q. What time had elapsed since you had seen him?
A. It had been about two weeks before the assassination.
Q. What time did he come to the house on that occasion?
A. I think he came between eight and nine o'clock.
Q. Where did you see him on that occasion, in the parlor first, or where?
A. I met him in the parlor.
Q. Who was present with him?
A. Mr. Weichman, Miss Surratt, Mrs. Surratt, Miss Jenkins, and myself.

Q. Do you recollect anything about his taking supper on that night, and if you had anything to do with it, state all about it?

A. I was in the parlor and his mother asked me if I would not go down and get something for John to eat. I went down, and when supper was ready I called Mrs. Surratt, and they both came down together.

Q. Now please go on and state what occurred.

A. When I was there a colored woman came in and brought the tea.

Q. The colored woman who testified here, Susan Ann Jackson?

A. Yes, sir.

Q. How long had this colored woman been at the house?

A. I do not remember how long, I know she came during the week Mr. John Surratt was absent from home.

Q. It was the week preceding this supper?

A. Yes, sir. When this colored woman came in, Mrs. Surratt said to her "here is my son John, don't you think he resembles his sister Anna?"

Q. Have you any recollection of any supper the night of the assassination when John was there, or when any conversation of that sort occurred?

A. No, sir.

Q. Can you say positively that nothing of the kind occurred the night of the assassination?

A. I know Mr. Surratt was not in the house that night.

Q. Did you ever see Atzerodt come to the house?

A. Yes, sir.

Q. In whose company was Atzerodt usually when he came there?

A. I generally saw him with Mr. Weichman more than with any other gentleman in the house.

Q. Did you ever see him wear Mr. Weichman's clothes?

A. I met him on H street one evening, and Mr. Atzerodt had on Mr. Weichman's blue coat and his hat.

Q. Did you ever see Weichman dressed in Atzerodt's clothes more than once?

A. I never saw Mr. Weichman dressed in Mr. Atzerodt's clothes, and I only saw Mr. Atzerodt dressed in Mr. Weichman's clothes but once.

Q. Did you ever see a man who visited that house by the name of Wood?

A. Yes, sir.

Q. Did you hear him called, in that house, by any other name than Wood?

A. No, sir; I only knew him by the name of Wood.

Q. Was he ever introduced in your presence by the name of Payne by Mr. Weichman?

A. No, sir; I never remember hearing any name but Wood.

Q. Did you ever see that man afterwards under the name Payne?

A. No, sir.

Q. You saw him at the assassination trial?

A. Yes, sir; I saw him there, that was the first time I knew his name was Payne.

Q. Who brought him to the house and introduced him, do you recollect?

A. I received an introduction to him through Mr. Weichman.

By Mr. BRADLEY:

Q. Was he introduced to you by Weichman?

A. Yes, sir.

Q. Under what name?

A. Mr. Wood.

Q. Was he introduced to you by Mr. Weichman by the name of Payne?

A. No, sir.

By Mr. MERRICK:

Q. Do you recollect who drove the pair of horses home when John went away on the 26th of March, 1865?

A. I think they were driven home by Mr. David Barry.

Q. Do you recollect, some time in March, taking a walk with Mrs. Surratt, Miss Jenkins, Miss Anna Surratt, and Mr. Weichman when Mrs. Surratt stopped at the Herndon House?

A. Yes, sir.

Q. Did she say who she was going to see?

A. No, sir; I never heard her mention who she was going to see.

Q Did she say she was going to see Payne?

A. No, sir.

Q. I understood you to say you did not know him by the name of Payne at that time?

A. I did not.

Q. Did Anna Surratt go into that house with her mother?

A. Yes, sir.

Q. State as nearly as you can recollect who the parties were, and what occurred?

A. Mrs. Surratt, Mr. Weichman, Miss Surratt, Miss Jenkins and myself went down to St. Patrick's church on that evening. When we were returning Mrs. Surratt stopped at this house, and her daughter went in with her.

Q. Where did you go?

A. Mr. Weichman, Miss Jenkins, and myself walked up not very far from that house, then we turned, Mrs. Surratt came out and we went home.

Q. Did you go down E street and then down 10th street before Mrs. Surratt returned?

A. No, sir; we did not leave the square the house was on.

Q. I understand that you parted with her at the front door of the house, then walked along down the street the house was on, then turned and Miss Surratt and her mother joined you?

A. Yes, sir.

Q. You did not leave the street on which the house was, or the square?

A. No, sir.

Q. Were you at supper at Mrs. Surratt's house on the night of the assassination?

A. Yes, sir. I was with Miss Surratt. Mr. Weichman and Mrs. Surratt came to supper together. Miss Jenkins, Miss Anna Surratt, and myself were there when Mr. Weichman, and Mrs. Surratt took their supper.

Q. That was after they came back from Surrattsville?

A. Yes, sir.

Q. About what time in the day was it?

A. I think it was between 8 and 9 o'clock.

Q. Did Mrs. Surratt leave the table at any time that night while they were eating supper?

A. Not to my knowledge.

Q. You were there all the time were you while they were there?

A. Yes, sir. I do not remember her leaving.

Q. While they were at supper, did you hear any footsteps going up the outer stairs?

A. Yes, sir.

Q. Was the bell rung at the door and answered?

A. Yes, sir.

Q. Did the footsteps that went up the stairs go into the parlor?

A. No, sir. I do not remember that.

Q. Did Mrs. Surratt answer that bell?

A. I do not remember Mrs. Surratt leaving the dining-room while I was there.

Q. Who answered that bell at that time?

A. It was Miss Anna Surratt.

At this point the court took a recess for half an hour.

AFTERNOON SESSION.

On reassembling the examination of Mrs. Honora Fitzpatrick was resumed:

By Mr. MERRICK:

Q. Did you go anywhere in company with Mrs. Surratt on the Thursday morning preceding the day of the assassination?

A. Yes, sir. Mrs. Surratt and myself went to early mass at St. Patrick's church.

Q. What did you go for?

A. I went there to confession.

Q. Did she do so also?

A. Yes, sir.

Q. You say you were at supper with Mrs. Surratt, Mr. Weichman and Mr. and Mrs. Holahan after Mrs. Surratt and Weichman came back from Surrattsville on Friday night?

A. Yes, sir.

Q. What did you all do after supper?

A. After supper Mrs. Surratt, Miss Jenkins and myself all retired to the parlor. Miss Anna Surratt retired to her room. She did not feel very well that night.

Q. Was Mr. Weichman in the parlor?

A. Yes, sir.

Q. You all then went into the parlor except Miss Anna, who went to bed feeling badly?

A. Yes, sir.

Q. Can you recollect what time it was that you went up into the parlor?

A. I do not remember the time exactly.

Q. Will you state what occurred after you went up into the parlor?

A. We engaged in general conversation.

Q. Who was the first of the party who left the parlor and retired, after Miss Anna Surratt?

A. Mr. Weichman.

Q. How long did Mr. Weichman remain with your party in the parlor, after you went up there from supper?

A. He remained there some time. Miss Jenkins and myself were teasing him that evening.

Q. Did he remain there as long as an hour, or half an hour?

A. I suppose he had been there about an hour.

Q. He then retired, and left you, Miss Jenkins, and Mrs. Surratt in the parlor?

A. Yes, sir.

Q. Did you leave the parlor, at any time, after you went there from the supper room, before Mr. Weichman left?

A. No, sir.

Q. Did you observe anything peculiar, on that occasion, in Mrs. Surratt's manner?

A. No, sir; I did not notice any change in her conduct more than usual.

Q. Was there any apparent nervous excitement about her manner?

A. No, sir; she did not appear to me to be nervous.

Q. Do you remember of her walking up and down the room with a pair of beads in her hands, asking Weichman to pray for her intentions?

A. I remember of her walking up and down the room, but do not remember of her asking Mr. Weichman to pray for her intentions.

Q. Do you remember anything about his reply; that he never prayed for anybody's intentions unless he knew what they were?

A. No, sir; I do not remember any conversation of the kind.

Q. You and Miss Jenkins, as I understand you, were conversing together with Weichmann, during the time he remained in the parlor?

A. Yes, sir.

Q. At what time did Miss Jenkins leave the parlor?

A. She had been there, I suppose, a few minutes.

Q. How long after Weichman left?

A. I suppose about half an hour.

Q. Did you or Miss Jenkins bid Weichman good night at his room door, that night?

A. No, sir. I never did.

Q. At what hour of the night did you retire to bed?

A. I think it was about ten when I retired.

Q. Do you recollect being awakened that night by persons coming to the house to search it?

A. Yes, sir; I remember being awakened about two o'clock in the morning, by the door bell ringing.

Q. You were awakened by the ringing of the bell?

A. Yes, sir.

Q. Did you get up when the bell rung?

A. Yes, sir.

Q. Did Mrs. Surratt get up when the bell rung?

A. She got up a few minutes after I did.

Q. Do you recollect Weichman's coming to the door to speak to her?

A. Yes, sir.

Q. Did you hear their conversation?

A. I remember Mr. Weichman rapped at the door and said: "Mrs. Surratt, there are detectives in the parlor, to search the house. They would like to search your room." She said: "Ask them to wait a few moments, and I will open the door for them."

Q. What else was said?

A. Nothing else was said until Mrs. Surratt opened the door, and Mr. McDevitt came there.

Q. Did she say to him at that time, that "I expected the house to be searched?"

A. No, sir; I never heard her make any such remark.

Q. Did you hear the conversation that took place between the detectives and Mrs. Surratt, Mr. Weichman being present?

A. Mr. McDevitt came to Mrs. Surratt's door, bowed, but without entering, said he would like to search the other rooms of the house.

Q. Do you recollect of Mr. Clarvoe coming there?

A. No, sir; I do not remember any but Mr. McDevitt.

Q. Were you at breakfast the next morning after the assassination—Saturday morning?

A. Yes, sir.

Q. At what time in the course of your breakfast did Miss Anna Surratt appear at the table?

A. We had nearly finished breakfast when Miss Anna Surratt entered the dining room.

Q. Who were at the table at that time?

A. Mr. and Mrs. Holahan, Mrs. Surratt, Mr. Weichman, and myself.

Q. Was Miss Jenkins there?

A. Yes, sir.

Q. State whether or not you heard Miss Anna Surratt say that the death of Lincoln was no more than the death of a negro in the northern army?

(Objected to by Mr. Pierrepont as irrelevant and collateral, the testimony sought to be contradicted having been brought out on cross-examination. Objection sustained. Exception reserved.)

Q. Did Weichman state at the table on that morning that he had his suspicions against these parties, and that he was going to state to the government his suspicions; make known who he had seen Booth in company with, and do all he could to bring the parties to justice?

A. No, sir; I never heard him make any such remark.

Q. Did Weichman leave the table before you did?

A. Yes, sir.

Q. Do you recollect the night that Mrs. Surratt was taken to the office of the provost marshal?

A. Yes, sir.

Q. At what hour of the night did the parties who took her there get to the house?

A. I think it was about 10 o'clock when they came.

Q. Do you recollect who was in the parlor at the time Captain Smith came in?

A. Miss Jenkins, Miss Anna Surratt, and myself.

Q. Do you recollect anything about Weichman's asking Miss Surratt to let him see a letter on the night of the assassination, when you were in the parlor?

A. No, sir; I do not remember it.

Q. Where was Miss Anna Surratt sitting in the parlor when Captain Smith came in?

A. I think Miss Surratt was sitting on the chair near the sofa.

Q. Where were you seated?

A. Miss Jenkins and myself were sitting on the sofa together.

Q. Near Miss Anna Surratt?

A. Yes, sir.

Q. Did Mrs. Surratt whisper anything to Anna?

A. I do not remember it.

Q. Did you hear Anna Surratt say on that occasion, "Oh, mother! think of being taken down there for such a crime?"

A. No, sir; I do not remember of Miss Surratt making any such remark.

Q. On the night of the assassination do you recollect hearing Miss Surratt say when they were talking about the matter, "Oh, mother! to think of that man having been here only an hour before. What disgrace it will bring on the house?"

A. No, sir; I do not remember it.

Q. Did you hear Mrs. Surratt say in reply, she thought John Wilkes Booth was only an instrument in the hands of Providence to punish this proud and licentious people?

A. No, sir; I never heard such a remark from Mrs. Surratt.

Q. Were you present all the time with Mrs. Surratt in the parlor that night?

A. I was present all the time Mr. Weichman was there.

Q. Now on the night that they came to arrest Mrs. Surratt to take her to the provost marshal's office, did you see Wood at the house?

A. I saw a man there, but I did not recognize him until I got to General Augur's office.

Q. You were very intimate with Mrs. Surratt, were you not?

A. Yes, sir; I was in Mrs. Surratt's company very often.

Q. State whether Mrs. Surratt's eyesight was good or defective?

A. Her eyesight was very bad.

Cross-examined by Mr. PIERREPONT:

Q. What was the matter with her eyesight?

A. I think Mrs. Surratt was near-sighted. I remember once when I was out with her she failed to recognize Mrs. Kirby, who was walking on the same side of the street with her.

Q. Did she ever wear glasses?

A. No, sir.

Q. Did she ever wear an eye-glass?

A. No, sir.

Q. What caused you to think her near-sighted; did she ever tell you so?

A. No, sir; but I judged so from her not recognizing Mrs. Kirby on the street, and I heard her say her sight was very bad.

Q. She did not do anything to improve it, by the way of glasses or otherwise?

A. She never wore glasses, but I remember of often threading a needle for her, because she could not do it herself.

Q. You never saw her wear any eye-glasses or spectacles?

A. No, sir.

Q. You have told us about the horses; will you tell us if you are sure of the name of the man who brought them back?

A. Yes, sir; I think it was a Mr. David Barry.

Q. Were those the same horses that Mrs. Surratt and John and Mrs. Slater went away with?

A. I did not see the horses when Mr. Barry returned.

Q. What were the horses that were brought back that you told about?

A. Mr. Barry came and said he returned the carriage that Mrs. Surratt had.

Q. Do you remember when that was?

A. No, sir.

Q. Do you remember whether John's note, dated March 26, that we have had in evidence, accompanied it?

A. No, sir; I do not remember that. There might have been one, but I do not remember of seeing it.

Q. You saw Colonel Smith there that night, did you?

A. I did.

Q. Did you see Colonel Morgan?

A. I do not remember any name but that of Colonel Smith.

Q. Did you see Captain Wernerskirch?

A. No, sir. I do not remember any one else but Colonel Smith.

Q. Mr. Weichman was there the night you were arrested?

A. No, sir.

Q. Who was present at the time you were arrested except Colonel Smith?

A. I do not remember any of them at all.

Q. There were more persons there than him, were there not?

A. Yes, sir; there were a great many officers there.

Q. Was Colonel Morgan there?

A. I do not know.

Q. Was Colonel Wermerskirch there?

A. I do not know.

Q. Have you read his testimony, or that of Colonel Morgan, or heard it read?

A. I do not remember their names; I have read all the evidence.

Q. On the night you were arrested how many men did you see there besides Colonel Smith?

A. I do not remember how many there were, but I remember there were a great many of them.

Q. Did you hear any of the expressions that you have been asked about made by anybody at that time?

(Objected to by Mr. Merrick. Question withdrawn.)

Q. Did she whisper to Anna?

A. I do not remember of her whispering to Miss Surratt.

Q. Do you know whether she did or not?

A. I was in the parlor, and I do not remember of her doing it.

Q. Were you out in the hall when Mrs. Surratt passed by an officer at the door?

A. Mrs. Surratt, Miss Jenkins, Miss Anna Surratt and myself, all passed out together.

Q. Did you hear Mrs. Surratt say anything to Colonel Morgan?

A. No, sir.

Q. Did you hear her say anything to the officer there?

A. No, sir; I do not remember of her speaking at all.

Q. You did not hear anything?

A. No, sir.

Q. What time did you go to bed on the night of the murder of the President?

A. I think it was ten o'clock when I retired.

Q. Who went to bed first, you or Mrs. Surratt?

A. I retired before Mrs. Surratt.

Q. How long before? Had you got to sleep before she came?

A. I do not remember when Mrs. Surratt came.

Q. Did you go to sleep pretty soon after you retired?

A. Yes, sir.

Q. Who came into the house after you got to sleep that night until you got up again; you do not know, do you?

A. I do not remember of anybody coming there.

Q. You do not remember of anybody who came there while you were asleep?

A. No, sir; I do not remember whether anybody came there or not.

Q. They might, I suppose, have come in while you were asleep without you knowing it?

A. Yes, sir.

Q. Now I will go back to the 3d of April. That night John came from Richmond?

A. Yes, sir.

Q. What time did he get home?

A. I think between 8 and 9 o'clock.

Q. What day of the week was it?

A. On Monday.

Q. Who was in the room when he came in?

A. Miss Jenkins, Mrs. Surratt, Miss Anna Surratt, Mr. Weichmann, and myself.

Q. What room were you in?

A. I was in the parlor.

Q. When did he get his supper?

A. I do not know the exact time.

Q. You went down, did you, to order it?

A. Yes, sir.

Q. Who did you go to order it from?

A. I went down to give the things to the girl to get the supper with, and did give them to her.

Q. To whom?

A. To the servant.

Q. To what servant?

A. Susan Ann Jackson.

Q. Did she make the tea?
A. Yes, sir.
Q. While you were there?
A. Yes, sir.
Q. Did you stay and see her make it?
A. I did not stay in the kitchen, but I was in the dining-room.
Q. Did you stay in the dining-room?
A. Yes, sir.
Q. How soon did she bring it in?
A. She did not bring it in until Mrs. Surratt and Mr. Surratt came down. I had been there only a few minutes before she brought it in.
Q. Did she bring anything else in?
A. I do not remember of her bringing anything but the tea.
Q. Did you stay there during the whole time?
A. Yes, sir.
Q. How long?
A. I staid there until I heard Mrs. Surratt say——
Q. How long did you stay?
A. I suppose I had been in the dining-room fifteen minutes.
Q. Who went out of the dining-room first?
A. I did.
Q. Who did you leave in the dining room?
A. Mrs. Surratt and Mr. Surratt.
Q. Both?
A. Yes, sir.
Q. And there you heard something said about John looking like Anna, did you?
A. Yes, sir.
Q. Who said that?
A. Mrs. Surratt.
Q. Was there any food brought in at all?
A. No, sir; I do not remember of her bringing in anything but the tea. I set the table.
Q. What did you set upon the table?
A. I placed some bread, butter, and ham on it.
Q. Did Mrs. Surratt partake of the supper with John?
A. Yes, sir; she sat down to the table with him.
Q. Did you partake of the supper?
A. No, sir; I had had my supper before.
Q. Mrs. Surratt had not had her's?
A. No, sir.
Q. And she ate with him, but you did not?
A. I do not remember whether she ate with him or not. I remained there a few minutes.
Q. Did you hear anything said about any clothes at that time?
A. No, sir; I do not remember of hearing anything.
Q. When did you next see John?
A. It was when I was called down here as a witness for the prosecution.
Q. Recently?
A. Yes, sir.
Q. After you saw him at the supper table on the 3d of April you never saw him again until you saw him here?
A. No, sir.
Q. You do not know where he went; you did not see him anywhere else?
A. No, sir.
Q. You never saw him anywhere else?

A. No, sir.
Q. Did not you see him up in the parlor after that?
A. No, sir.
Q. You did not see him in the dining-room after that?
A. No, sir.
Q. Did you go to the theatre that night?
A. No, sir; I did not go to the theatre on the 3d of April.
Q. Where did you go after you went from the dining-room?
A. I went up into the parlor.
Q. Who did you find there?
A. Miss Jenkins, Miss Surratt, and Mr. Weichman?
Q. Did John Surratt come into the parlor?
A. No, sir.
Q. If he had come in you would have seen him?
A. I saw him in the back parlor.
Q. Did you see him in the back parlor after he had been down in the dining-room?
A. Yes, sir.
Q. Who did you see him with in the back parlor?
A. I was in the parlor, and Mrs. Surratt called me out and told me that John had a very bad headache, and asked me if I had any cologne that I could give him.
Q. Did you see John in the back parlor after he ate supper?
A. Yes, sir.
Q. Did you see him anywhere else after he ate supper?
A. No, sir.
Q Was that the last time you ever saw him until you saw him here?
A. Yes, sir.
Q. What time was that when you saw him in the back parlor, and which you now say was the last time?
A. I do not remember; I suppose about 9 or half past.
Q. Who else was in the back parlor with him?
A. Mrs. Surratt.
Q. Nobody else?
A No, sir.
Q. Was Mr. Weichman then in the front parlor?
A. Yes, sir.
Q. Were the doors open?
A. No, sir.
Q. Were they closed?
A. Yes, sir.
Q. On the night of the murder you say you went to bed about 10 o'clock. Do you remember at what time in the morning you were awakened?
A. I think it was about 2 or half past 2 o'clock.
Q. How were you awakened?
A. By the door bell ringing.
Q. Did anybody come to Mrs. Surratt's door?
A. Mr. Weichman came there and rapped.

By Mr. MERRICK:

Q. You have spoken of Mrs. Surratt's defective eyesight. Will you please tell the jury whether she was in the habit of reading or sewing after gaslight?
A. No, sir; I never saw Mrs Surratt read or sew after gaslight.
Q. Did she give any reason for not sewing or reading after gaslight?
A. She said her sight was not very strong.

Q. Do you recollect of her receiving a letter from John Surratt on Friday, the day of the assassination?

(Objected to by Mr. Pierrepont. Objection sustained.)

Q. Do you know by letters from him or from your own observation where he went?

(Objected to by Mr. Pierrepont. Objection sustained. Exception reserved.)

CHARLES B. STEWART sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?

A. At Elmira, New York.

Q. What is your business?

A. Merchant tailor. I am in the clothing business.

Q. Where were you residing, and in what business were you engaged in April, 1865?

A. I was engaged in the same town, in the same business, on the same street, but in a different store from what I am now.

Q. State whether your store was all in one room or whether you had more than one room.

A. There were two stores connected together.

Q. Did you carry on the same business in both or were they different?

A. We had different departments. One was the hat, cap, boot, and shoe store, and the other was merchant tailoring, clothing, and gents' furnishing business.

Q Will you state where that store was in April, 1865?

A. Nos. 20 and 22 Lake street, Elmira, New York.

Q. State whether you were in the store during the day of the 14th of April, 1865.

A. I was.

Q. Do you recollect a gentleman coming in that day to speak about getting a suit of clothes there, who had on anything peculiar in the way of dress?

A. On the 13th or 14th of April, I do.

Q. Which?

A. I cannot say which, but one or the other.

Q. Describe as well as you can his dress.

A. It was a style of cut which I had never seen before, nor have I since, until to-day. I refer to the cut and the make of the coat.

Q. Do you remember the color?

A. It was gray, mixed with tweed, of foreign manufacture. It was what is called a skeleton coat, that is, made without lining. It was cut full, pleated, and gathered at the waist by a belt. The style of manufacture is, I believe, in use in Canada.

Q. How long did that person remain in the store?

A. I should say I saw him twice. That is I stepped from one store to the other and saw him twice. He was there from ten to twenty minutes. I cannot speak very definitely as to the time.

Q. State whether your attention was or not particularly directed to him.

A. It was.

Q. Do you recollect his appearance?

A. His face and manner, I do.

Q. Did you hear his voice in conversation without speaking to him yourself?

A. I did.

Q. Have you seen that person since?

A. I think I have.

Q. When and where?

A. To-day, in the jail and in this place.
(The prisoner was here requested to stand up.)
Q. State whether that is the man. (Pointing to the prisoner.)
A. I believe that to be the man.

Cross-examined by Mr. PIERREPONT:

Q. You have not much doubt about this being the man.
A. I have not.
Q. Will you tell us what day of the month it was?
A. It was either the 13th or the 14th.
Q. Which?
A. I cannot tell which.
Q. Why cannot you fix the day?
A. Because it was while my partner was in New York purchasing goods. He was gone those two days, and this man came in then; but on which one of the two days I am unable to say.
Q. You are sure it was while your partner was gone?
A. Yes, sir.
Q. And you know he was gone on the 13th and 14th?
A. Yes, sir. I tell that from my books.
Q. Did he get back the 14th?
A. He got back on the morning of the 15th.

By Mr. BRADLEY:

Q. You say you fix it by the fact of your partner being absent at the time. Please state whether anything passed in your hearing in reference to your partner being out of town.
Mr. PIERREPONT. I object. We want the facts, not the reasoning of the witness.
The COURT. I do not see how any conversation of this kind can be given in evidence. The question is ruled out.

By Mr. MERRICK:

Q. What time was this?
A. It was after my return from dinner.
Q. At what time do you dine?
A. At 12 o'clock. We have good country hours there.
Q. On the 13th or 14th after 12 o'clock?
A. Yes, sir.

By the COURT:

Q. How long does it take to go from Elmira to New York?
A. The express train runs through in twelve hours.
Mr. BRADLEY suggested that all that matter regarding the movements of the train and the time occupied in travelling from point to point on this route would be given in evidence by them.
Mr. PIERREPONT said if counsel for the defence didn't offer such proof the prosecution would.

JOHN CASS sworn and examined.

By Mr. BRADLEY:

Q. Where do you reside?
A. At Elmira.
Q. What is your occupation?
A. Assessor of the city at present.

Q. Where were you residing in April, 1865?

A. In Elmira. I kept a clothing store at the corner of Water and Baldwin streets.

Q. Do you remember any particular incident which occurred on the morning of the 15th of April, after the news of the assassination of the President was received in Elmira?

A. That morning I got the paper about half past seven o'clock with the news of the assassination. In consequence of the news in the paper, I staid at home probably longer than I would have done. I got down to the store about quarter to eight or perhaps eight o'clock. My store was directly opposite the telegraph office, and when I got down there I went over to the telegraph office and inquired the news of an operator who was a personal friend of mine. He told me they had received nothing since the news of the assassination, but as soon as they did he would let me know. I staid around there some time with other friends. Shortly after nine o'clock news came of the death of Abraham Lincoln. I immediately walked over to my store and told the clerks to close up.

Q. This was early in the morning, before any public order had been issued?

A. Yes, sir. They had received no public news of the death. I then went and stood at the front door of the store. By that time the bulletin had been placed on the side door. I at that time noticed a gentleman coming across the street whom I thought, from his dress, was a friend of mine from Canada. That was my first idea when I saw him coming across the street; but I soon saw it was not, and I then turned and started to go back into the store. I had not, probably, got more than ten feet into the store, when this party whom I had observed, came in. He inquired for some white shirts. He asked me for a particular make, which make I did not keep, and told him so, but proceeded to show him some other descriptions of white shirts. He examined them, but said he would rather have those of the make which he had been accustomed to wearing. At that time I made a remark that we had received some very bad news. He asked, "What?" I said to him, "Of the death of Abraham Lincoln." The party made an answer to my remark which at the first commencement I took to be a little disrespectful, and I felt rather incensed, but before he concluded I was satisfied no disrespect was intended. My idea was that he was a Canadian and had no sympathy with our people.

Q. What was the remark?

A. I cannot recall it, but I remember the feeling I had at the time.

Q. His explanation satisfied you that he meant no disrespect?

A. Yes, sir. I thought that he was a Canadian who had no sympathy with us, and who did not feel as we felt about the matter.

Q. Can you describe his dress?

A. He had on darkish pants; a kind of mixed blue coat—I should call it—pleated, with a belt around the waist. That was the first thing that caused my attention to be drawn to him.

Q. Have you ever seen that man since?

A. I have.

Q. Where have you seen him?

A. In the jail down here.

(The prisoner was requested to stand up.)

Q. Look at that man (pointing to the prisoner) and state if he is or not the man.

A. That is the man I saw there.

By a JUROR. Was that on the 15th?

A. Yes, sir; while closing the store after seeing the news.

Cross-examined by Mr. PIERREPONT:

Q. How did you get the first news of the assassination?

A. At home in the morning paper.

Q. What paper?
A. The Elmira Advertiser.
Q. At what time did you see the Elmira Advertiser?
A. Between 7 and 7½ in the morning.
Q. That was on Saturday morning, the 15th?
A. I do not remember the day.
Q The next morning after the assassination?
A. Yes, sir.
Q. You think it was the 15th?
A. Yes, sir.
Q. That was the first you heard of it?
A Yes, sir.
Q. What did you do when you heard of it?
A. I went into my dining room and took breakfast with my family; read the news, and felt very badly about it.
Q. When did you go to the telegraph office.
A. It must have been between eight and half past eight.
Q. Who did you see there?
A. Mr. Palmer.
Q. Did you get any more news?
A I did not at that time. No other news had come.
Q. When did this man, who looked like a Canadian, cross the street?
A. I should say it was between the hours of nine and ten, probably half past nine.
Q. Was he dirty or was he clean?
A. Clean.
Q What had he on his head?
A. He had a hat of some kind. I cannot tell what kind.
Q. What kind of trowsers did he wear?
A. A lightish pair of trowsers. I should think drab.
Q. Was there anything peculiar about them?
A. Not that I know of. I do not remember noticing particularly any portion of his dress except his blouse.
Q. Was there anything peculiar in his hat?
A. Not that I am aware of.
Q. What kind of a beard had he?
A. He had a goatee, which came from about the side of the lips round.
Q. Pretty long?
A. Rather short.
Q. Had he anything else?
A I think not.
Q. You are very sure he had a goatee coming around here, under the chin?
A. Yes, sir.
Q. You have no doubt of that?
A. I think not. That is my impression.
Q. Had he a moustache, the same as he has now?
A. No, sir.
Q. What color was the goatee that he had here, around under the chin?
A. Rather a dark brown.
Q. The same color it is now?
A. No, sir. My impression is that it was rather darker than it is now.
Q. Did you think it was dyed?
A. I did not look at him enough to be able to say.
Q. Was it the same color then as it is now?
A. It was darker.
Q. Do you think it was an unnatural color?

A. No, sir; I do not think it was an unnatural color.
Q. He has a moustache now?
A. Yes, sir; a light one.
Q. And that he didn't have then?
A. I did not notice any.
Q. How was his hair then?
A. I could not tell, because I did not notice enough to see.
Q. Do you know Colonel Foster?
A. No, sir; I do not.
Q. Have you not been here before?
A. Yes, sir.
Q. Did you talk with a gentleman here on this subject when you were here before?
A. No, sir.
Q. Did you talk with anybody on the subject?
A. I talked with Mr. Bradley and Mr. Merrick.
Q. Nobody else.
A. Not that I recollect of now.
Q. Don't you know Colonel Foster? Did not he see you at Elmira?
A. I saw a gentleman on the train who represented himself to be Colonel Foster. I was not introduced to him, and, probably, I would not recognize him.
Q. Did you talk with that man here when you were here before?
A. No, sir.
Q. Is there any other John Cass that you know of?
A. Not that I know of.
Q. If you did not talk with Colonel Foster did you talk with any other man here except Mr. Bradley and Mr. Merrick?
A. No, sir; except the parties who came with me from Elmira.
Q. Who came with you?
A. Mr. Atkinson, Mr. Carroll, and Mr. Fowler.
Q. Nobody else?
A. Yes, sir; a gentleman from Canada, whose name I do not remember.
Mr. BRADLEY. Mr. Baylin.
WITNESS. I believe that is it.
Q. When were you here last?
A. I think it was three weeks ago.
Q. At that time didn't you go over to the jail?
A. Yes, sir.
Q. Didn't you see the prisoner there?
A. Yes, sir.
Q. Didn't you have a conversation out here, near the city hall, on that subject with Colonel Foster after you had been to the jail?
A. No, sir.
Q. Did you with Mr. Knapp?
A. No, sir.
Q. Do you know him?
A. Yes, sir; very well.
Q. Did you have any conversation with Mr. Knapp, in Elmira, about it?
A. We spoke about it while coming on here, but no particular conversation.
Q. Did you state to him after you had been to the jail that you did not recognize the man?
A. No, sir; I did not.
Q. Did you say anything to him about it?
A. I do not know Colonel Foster.
Q. Well, the one who was pointed out to you as Colonel Foster?
A. Nobody was pointed out to me as Colonel Foster.

Q. Then you did not talk to him on the subject?

A. No, sir.

Q. Do you know this gentleman sitting at my right, (assistant district attorney Wilson?)

A. I do not.

Q. Did you talk with him across the street over here near his office?

A. No, sir.

Q. You didn't say a word to him?

A. I do not remember it.

Q. At the foot of the stairs?

WITNESS. When?

Mr. PIERREPONT. Three weeks ago, or about that, when you were here.

A. No, sir. I saw you, and spoke to you, and may have spoken to him at the same time.

Q. Didn't you see this gentleman standing with me at the time?

A. I presume he came there while you and I were speaking.

Q. Did you talk with him?

A. No, sir; I believe not.

Q. Did you ask him anything?

A. No, sir.

Q. Didn't you tell him what you knew, and what you didn't know?

A. No, sir.

Q. Did you not ask him—this gentleman, Mr. Wilson—if you could not go home?

A. No, sir; I had nothing to do with it.

Q. Did you tell him that you knew nothing about this person?

A. No, sir; I did not.

Q. Nothing of the kind?

A. No, sir.

Q. Did you say anything at all to him about the case?

A. Not that I am aware of. I do not think the case was spoken of. I do not remember speaking to him at all. I remember speaking to you.

Q. Was Mr. Knapp present?

A. Yes, sir; and was going to introduce me, when I told him that I knew you from seeing you in Elmira four years ago.

Q. Did you say anything to Mr. Wilson, in Mr. Knapp's presence, on the subject of this case?

A. No, sir; he did not mention the case at all.

Q. Did you here, or elsewhere, say anything to Mr. Knapp to the effect that you did not know anything about this prisoner?

A. No, sir.

Q. Did you, in Mr. Knapp's presence, ask Mr. Wilson if he did not think you could go home?

A. No, sir.

Q. Did you stand across the street, at the foot of the stairs, with this gentleman (Mr. Wilson) and Mr. Knapp?

A. I do not think I did. I do not remember of doing it.

Q. Do you know where the district attorney's office is?

A. No, sir.

Q. Have you been across the street, near the corner?

A. I have been to the corner—to Mr. Bradley's office.

Q. I mean near the corner?

A. I saw Mr. Knapp there, and I remember Mr. Knapp was going to introduce me to you, and we walked a little further from the corner, when some other parties came up and called your attention, and I left?


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